the weekly Standard

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SURVIVING THE OBAMA ERA
ELLIOTT ABRAMS

THE NEW LABOR ARISTOCRACY

THE UNCHECKED POWER OF PUBLIC SECTOR UNIONS

by Fred Siegel & Dan DiSalvo

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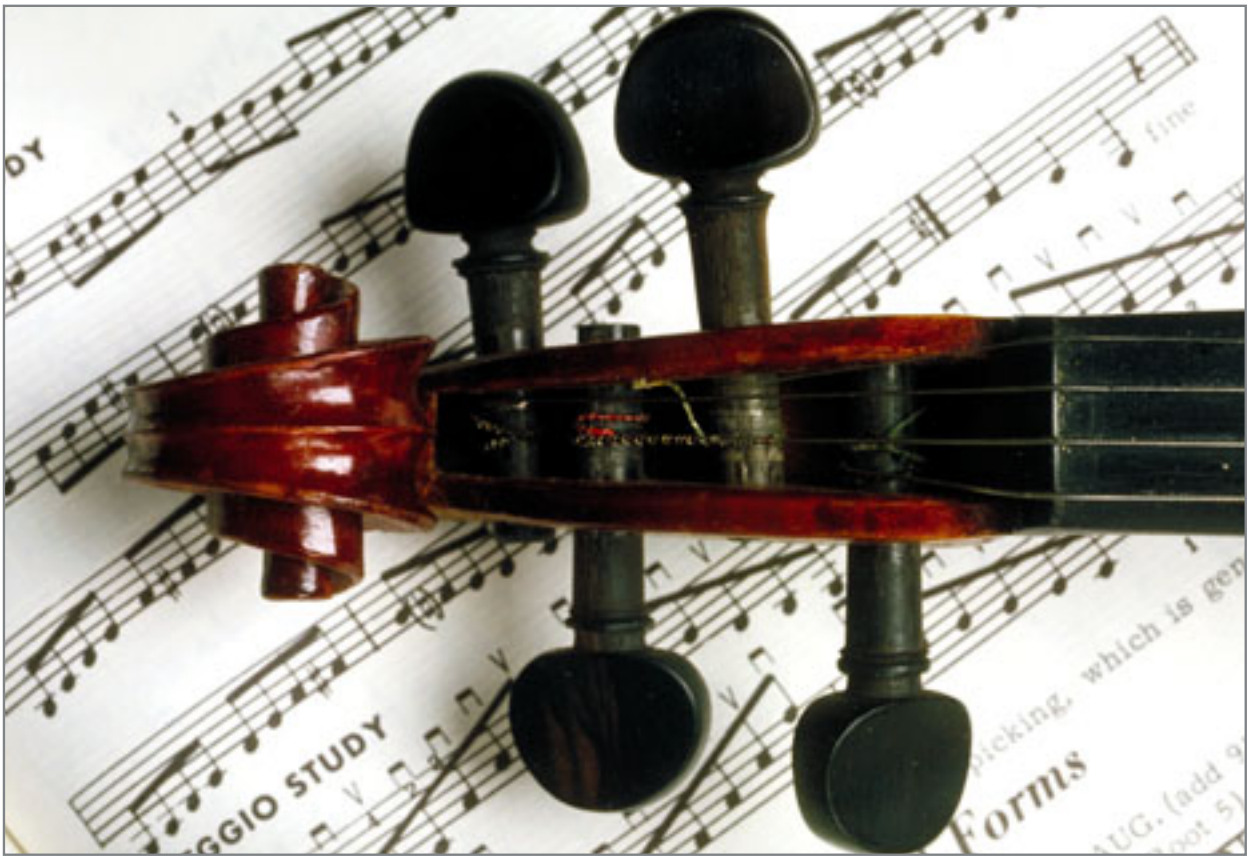

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Arabian Fables (I)

How the Arabs soften up world opinion with fanciful myths.

Josef Goebbels, the infamous propaganda minister of the Nazis, had it right. Just tell people big lies often enough and they will believe them. The Arabs have learned that lesson well. They have swayed world opinion by endlessly repeating myths and lies that have no basis in fact.

What are the facts?

The "Palestinians." That is the fundamental myth. The reality is that the concept of "Palestinians" is one that did not exist until about 1948, when the Arab inhabitants of what until then was Palestine, wished to differentiate themselves from the Jews. Until then, the Jews were the Palestinians. There was the Palestinian Brigade of Jewish volunteers in the British World War II Army (at a time when the Palestinian Arabs were in Berlin hatching plans with Adolf Hitler for world conquest and how to kill all the Jews); there was the Palestinian Symphony Orchestra (all Jews, of course); there was The Palestine Post, and so much more.

The Arabs, who now call themselves "Palestinians," do so in order to persuade a misinformed world that they are a distinct nationality and that "Palestine" is their ancestral homeland. But, of course, they are no distinct nationality at all. They are entirely the same — in language, customs, and tribal ties — as the Arabs of Syria, Jordan, and beyond. There is no more difference between the "Palestinians" and the other Arabs of those countries than there is between, say, the citizens of Minnesota and of Wisconsin.

What's more, many of the "Palestinians," or their immediate ancestors, came to the area attracted by the prosperity created by the Jews, in what previously had been pretty much of a wasteland.

The nationhood of the "Palestinians" is a myth.

The "West Bank." Again, this is a concept that did not exist until 1948, when the army of the Kingdom of Transjordan, together with five other Arab armies, invaded the Jewish state of Israel, on the very day of its creation.

In what can almost be described as a Biblical miracle, the ragtag Jewish forces defeated the combined Arab might. But Transjordan stayed in possession of the territories of Judea and Samaria and part of the city of Jerusalem. The Jordanians promptly expelled all Jews from the area that they occupied, destroyed all Jewish institutions and houses of worship, used Jewish cemetery headstones to build military latrines, and renamed as "West Bank" what had been Judea and Samaria since time immemorial.

The attempt, quite successful, was to persuade an uninformed world that these territories were ancestral parts of the Jordanian Arab Kingdom (itself a very recent creation of British power diplomacy). Even after the total rout of the Arabs in the 1967 Six-Day War, in which the Jordanians were driven out of Judea/Samaria and of Jerusalem, they and the world continued to call this territory the "West Bank", a geographical concept that cannot be found on any except the most recent maps.

> "The web of lies and myths that the Arab propaganda machine has created plays an important role in the unrelenting quest to destroy the State of Israel. What a shame that the world has accepted most of it!"

The concept of the "West Bank" is a myth.

The "Occupied Territories." After the victorious Six-Day War, during which the Israeli army defeated the same cabal of Arabs that had invaded the country in 1948, Israel remained in possession of Judea/Samaria (now renamed "West Bank"), which the Jordanians had illegally occupied for 19 years; of the Gaza strip, which had been occupied by the Egyptians but which (hundreds of miles from Egypt proper) had never been part of their country; and of the Golan Heights, a plateau of about 400 square miles, which, though originally part of Palestine, had been ceded to Syria by British-French agreement.

The last sovereign in Judea/Samaria and in Gaza was the British mandatory power — and before it was the Ottoman Empire. All of Palestine, including what is now the Kingdom of Jordan, was, by the Balfour Declaration, destined to be the Jewish National Home. How then could the Israelis be "occupiers" in their own territory? Who would be the sovereign and who the rightful inhabitants?

The concept of "occupied territories" in reference to Judea/Samaria (often called the "West Bank") and Gaza is another of the many myths created by Arab propaganda.

Unable so far to destroy Israel on the battlefield — though they are feverishly preparing for their next assault — the Arabs are now trying to overcome and destroy Israel by their acknowledged "policy of stages". That policy is to get as much land as possible carved out of Israel "by peaceful and diplomatic" means, so as to make Israel indefensible and softened up for the final assault. The web of lies and myths that the Arab propaganda machine has created plays an important role in the unrelenting quest to destroy the State of Israel. What a shame that the world has accepted most of it!

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BPA INTERNATIONAL

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President No

Barack Obama is President No. And not because he says no a lot. It's because he's the president who takes no for an answer—again and again and again. It's now his presidential trademark.

The "no" he received from the International Olympic Committee last week was only the latest and most embarrassing of a parade of no's. The president traveled to Copenhagen to plead the case for Chicago as the site of the 2016 summer Olympic games. He pleaded passionately. White House aides believed success was all but guaranteed. Then Chicago was knocked out in the first round of IOC voting. Rio de Janeiro won.

Friends and enemies—they all say no to Obama. He demanded that Israel put a freeze on West Bank settlements. Prime Minister Bibi Netanyahu said no. Obama relented and called for Israeli-Palestinian talks. Palestinian leader Mahmoud Abbas said no. Meanwhile, King Abdullah of Saudi Arabia said no when Obama personally asked him to make a friendly gesture toward Israel if settlements were curtailed.

NATO allies in Europe said no when Obama asked them to take some of the terrorists held in Guantánamo off his hands. They said no when he requested they send more troops to Afghanistan. France and Germany said no when Obama urged them to boost economic stimulus spending. An official in Scotland said no when asked to halt the release of the Libyan convicted of killing 190 Americans, and 80 other nationals, in the airline bombing over Lockerbie.

Remember when Obama urged Cuba to soften its dictatorship? Fidel Castro answered with an emphatic no. Or when he demanded tiny Honduras put its deposed president back in office? Honduras said no. Or when he asked Russia to accept an antimissile system in Poland and the Czech Republic aimed at Iran? Russia said *nyet* (and the idea was scrapped). Or when Obama said NAFTA, the free trade treaty, should be reopened? Mexico and Canada said no. Russia, by the way, said yes to tougher sanctions on Iran before retreating toward no.

Obama gets no for an answer at home, too. He asked former Virginia governor Doug Wilder to endorse the Democratic candidate for governor this year. Wilder said no. He, or at least his White House, asked Pennsylvania congressman Joe Sestak not to run against Arlen Specter for the Senate next year. Sestak said no. He said Democrats should kill a "buy American" provision in the stimulus bill. They said no.

Should we dismiss all this negativity as inconsequential? Does it simply reflect the way the world works in 2009? Is Obama just unlucky? The Scrapbook is reminded of the "Dysfunction" poster marketed on the Internet a few years back, depicting a chain with a broken link and this bit of wisdom: "The only consistent feature of all your dissatisfying relationships is you." ♦

Friedman's Nausea

Thomas (*The World Is Flat*) Friedman wrote one of his more-in-sorrow-than-anger columns last week in the *New York Times*, warning that conservative opposition to Barack Obama's legislative agenda reminds him of the ominous weeks in Israel before the assassination of Prime Minister Yitzhak Rabin.

"Others have already remarked on this analogy," he intoned, without identifying the others, "but I want to add my voice because the parallels to Israel then and America today turn my stomach."

Well, as readers of The Scrapbook are aware, Friedman's stomach is easily turned: He has a healthy appetite for the enlightened leadership of the People's Republic of China, but feels pangs of nausea at the sight of democratic dissent from the Obama administration. "Sometimes I wonder," he says, "whether George H.W. Bush, '41,' will be remembered as our last 'legitimate' president. The right impeached Bill Clinton and hounded him from Day 1 . . . [and] George W. Bush was elected under a cloud because of the Florida voting mess, and his critics on the left never let him forget it."

Up to a point, Lord Friedman—whose memory appears to be less durable than his stomach. For The Scrapbook remembers that, as far as the left was concerned, George H.W. Bush was an illegitimate president, too. Remember the "Willie Horton" television ads, which told the story of a Massachusetts murderer who while on furlough from prison raped a woman in Maryland? (Bush's 1988 rival Michael Dukakis defended the furlough program.) The Scrapbook remembers that, in surprisingly respectable circles, highlighting the rapist-murderer Willie Horton made George H.W. Bush an illegitimate president.

Then there was the B-list Hollywood actor Ronald Reagan, described by Garry Wills during his presidency as the tool of a consortium of malevolent Los Angeles millionaires. In the pages of the *New York Times* itself, Reagan was accused of secretly dispatching his 1980 vice presidential candidate, George H.W. Bush, to Paris to meet with representatives of the Ayatollah Khomeini to ensure that American diplomats were held hostage until after the election. The "October surprise" myth rendered Reagan's presidency illegitimate.

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THE EMPIRE STATE BUILDING HONORS THE 60TH ANNIVERSARY OF COMMUNIST CHINA

Or consider Reagan's predecessor, Gerald Ford, who, as the *Times* repeatedly pointed out, had been appointed, not elected, to the vice presidency by Richard Nixon, who not only was compelled to resign after Watergate but, in 1968, had sent a secret emissary (Claire Chennault) to Paris, and the Vietnam peace talks, to prevent any settlement before the election. All untrue, of course—but that first "October surprise" rendered Nixon illegitimate as well.

So The Scrapbook is obliged to remind Thomas Friedman that a little delving into the recent past might soothe his aching stomach, that the last president to be shot at was the aforementioned Ronald Reagan (and Gerald Ford, before him), and that the last American president actually to be assassinated was murdered by a left-wing crank and friend of the Soviet Union who ran his local chapter of the Fair Play for Cuba Committee. ♦

Sentences We Didn't Finish

'He may have bigger challenges now and in years to come, but nothing will endear Barack Obama to some of us more than his decision to take a quick transatlantic round trip to lobby the International Olympic Committee on behalf of Chicago's bid to be the host city of the 2016 Summer Games. I'm astonished that some carping critics . . . " ("Hail to the Booster in Chief," David S. Broder, *Washington Post*, October 1). ♦

The (Rare) Wit of Richard M. Nixon

Yes, President Nixon, it turns out, sometimes had a light touch with a putdown. Yes, we were astonished, too.

Edward Cox, Nixon's son-in-law, is taking on the thankless task of chairman of New York's Republican party, which occasioned a profile in the *New York Times* last week. Before marrying Tricia Nixon, Cox had been one of the original Nader's Raiders. Nader related to *Times* reporter Danny Hakim his encounter with Nixon in the receiving line at the couple's 1971 Rose Garden marriage:

> "When I get to Nixon he says, 'How's Raiders Naders?' I said, 'Mr. President, it's "Nader's Raiders."'" The president, Mr. Nader went on, added: "We were talking about you last night when our toaster broke down. Maybe it should have been recalled!"

Perhaps the only thing more astonishing than Nixon's deft skewering of Nader's legendary self-importance is that Nader has told a story at his own expense. ♦

Vive Sarkozy!

Upset at France's reluctance to back the Iraq war, some conservatives took to calling French fries "freedom fries." In view of President Sarkozy's toughness (in marked contrast to Barack Obama) on Iran's nuclear ambitions, The Scrapbook would like to suggest it is only fair that we now begin calling them *pommes frites*. ♦

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Casual

On the Road

Three weeks ago I walked out of my front door at 6:30 A.M., headed for the office. I made three turns in short succession, bringing me to Old Bridge Road, the local thoroughfare that leads, four miles away, to an entrance to I-95, the main north-south artery into Washington. After 20 minutes on Old Bridge, I had gone a mile and a half. I turned around and went home. At 9:15 I made another try for the office, arriving at my desk just before 11:30. I live 27 miles from work, as the tortoise crawls.

There was no specific cause for the delay that morning. There were no catastrophic accidents or road closings along the route. It was simply a bad case of traffic.

In a nontrivial sense, my life is governed by traffic. I used to live in an inner-ring suburb seven miles south of the city. On a good day, my commute took about 12 minutes. A couple months ago I moved south, to the new place. It's just 20 miles further out, but the geographic and temporal distances are only tangentially related. I can leave my house and be sitting at my desk in 35 minutes. The hitch is, I have to be on the road by 5:30 A.M. If I depart even 30 minutes later, traffic stretches the commute to an hour. If I leave at a mildly civilized hour—say, 7:00 A.M.—it can take two hours. Or more.

As a consequence, I treat traffic the way sailors treat weather. It is always the first consideration, a condition that defines the boundaries of prudence.

I'm reasonably philosophical about it. I view traffic as the great unsolved problem of our time, a Fermat's Last Theorem of modern life. People tend to think of traffic as either an untamable beast or an act of God. But it's mostly science.

For instance, we've all had the experience of sitting in a bad jam on the highway. You come to a halt, then the traffic eases a bit, then halts again. You experience this stutter-stop over and over until, like magic, you hit a release point. The traffic disappears and you continue on your way without ever seeing an accident or incident that caused the snarl.

$$\Delta Ts = \frac{TSnc - Tsrm}{Tsnc} + \frac{qcap - qcon}{qin + dqcon}$$

Yet your jam was not a random occurrence. At some point, perhaps hours earlier, something happened. Maybe it was an accident. Maybe there was debris in the road. Whatever the case, a bottleneck arose and traffic slowed. The rate of traffic approaching the bottleneck greatly exceeded the rate at which traffic was released from it. And as the traffic built, two waves—of acceleration and deceleration—rippled up and down the lengthening stream of cars, causing you to speed up, then slow down, over and over. The traffic jam is actually a math problem. And this math problem keeps jams going until the waves peter out, often long after the incident itself is resolved.

Traffic is all about math. A few years back *Los Angeles Magazine* ran an excellent story on traffic which explained the equation used to evaluate the efficiency of signaled on-ramps. That's it right there in the middle of this page.

But you don't need to know differential equations to understand the basics. The standard metric for traffic is capacity, measured in cars-per-lane-per-hour. An average highway moves at roughly 2,000 cars-per-lane-per-hour under ideal conditions. The riddle of traffic is solving for "ideal."

There are two components to traffic: drivers and roads. To achieve ideal efficiency, you first have to get drivers to behave optimally. Which is actually harder than it sounds. Once upon a time, 45 mph was considered the ideal target for highway driving—the speed at which the most cars could move through a lane in a given period. But over the years the behavior of American drivers changed. At higher speeds, we started driving in "platoon" formations—tightly packed, very efficient groups. So the ideal highway speed became 60 mph. Thus, ideal driver behavior is not constant.

The second half of the equation is the roads, where the goal is to eliminate bottlenecks. Highways often carry obvious, built-in bottlenecks—lane merges and divides, intersections—which reduce their capacity. But bottlenecks can also result from seemingly insignificant factors. For instance, on east-west roads bottlenecks can form when the sun sits close to the horizon, blinding east-bound drivers in the morning and west-bound drivers at night, causing them to suddenly slow down. Good engineering means designing roads to smooth away as many hidden bottlenecks as possible.

As you can imagine, there are many other variables in this complex equation. But like all mathematical problems, traffic is ultimately solvable. At least that's what I tell myself whenever I'm stuck.

Jonathan V. Last

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the weekly Standard

Same Old Obamacare

After a summer of setbacks on health care reform, Democrats on Capitol Hill again seem to think they have found a formula for success. The latest iteration of Obamacare, emerging this week from the Senate Finance Committee, is said to be a move to the center, avoiding the albatross of a government insurance option and costing "only" $900 billion.

But the bill, shepherded through a series of narrow party-line committee votes by chairman Max Baucus, is far from a compromise measure. It is a massively ambitious, costly, intrusive, inefficient, and clumsy combination of mandates, taxes, subsidies, regulations, and new government programs intended over time to replace the American health insurance industry with an enormous new government entitlement. And it fails to address what even President Obama has said is the core of our health care dilemma: rising costs. Indeed, there is every reason to believe that the Baucus bill would actually *increase* the cost of health insurance premiums.

JASON SEILER

By requiring insurers to cover all comers on the same terms and that the healthy and the sick pay the same amount for their coverage, the bill would raise costs for many of those who are now insured. The requirement that all Americans buy insurance approved by the government or pay a hefty fine, moreover, would create new captive customers for coverage and constrain the range of options available to them—a recipe for higher prices. It would also shift some costs from older to younger people, encouraging (and in many cases requiring) everyone to buy more comprehensive policies than they might otherwise want and eliminating many of the low-cost catastrophic care plans popular with younger Americans. Insurance will be more expensive, which in turn will depress wages since the cost of insurance will continue to come out of many Americans' take-home pay.

The bill would also create a new tax on hiring in the form of the employer coverage mandate, and this and the variety of other new taxes and penalties on insurers, drug makers, and health care providers would be passed right along to consumers. It would also make a mockery of President Obama's pledge not to raise middle class taxes.

Along with new taxes, the bill seeks to offset its enormous increases in government spending by squeezing Medicare, and particularly the Medicare Advantage program that millions of seniors use to get extra coverage through private insurers. But rather than use cuts in Medicare to shore up that program's ailing finances and help make it sustainable, the Baucus bill (like other Democratic plans this year) would use the money to create yet another unsustainable entitlement.

The bill would therefore exacerbate the chief causes of the rising costs at the core of our health care woes: inefficient entitlement spending and the absence of real market pressures in health insurance. Instead of addressing these, Baucus is offering tax increases, a new entitlement sure to grow more costly every year, fewer options for doctors and patients, a far greater government role in health care, and the prospect of health care service shortages, disruptions, and rationing.

And just what are all these costs and burdens for? The Baucus bill, like other versions of Obamacare, promises to increase the portion of Americans who have health insurance from 83 percent to 95 percent. Is there really no other way to move in this direction than to abandon a health care system that offers the vast majority of Americans care they are happy with and create a sprawling new federal fiasco?

Republicans have offered some better options, but given the balance of power in Washington, their most important task for now is to prevent the enactment of the profoundly misguided plans pursued by the Democratic majority. Voters have come to understand many of the grave problems with Obamacare in recent months. They should be helped to see that the Baucus version is no different. It would increase the cost of premiums for younger Americans, reduce Medicare benefits for older Americans, undermine the quality of everyone's care, and cost us all dearly.

—*Yuval Levin*

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Coalition of the (Sort of) Willing

A victory for Angela Merkel and the Free Democrats. BY VICTORINO MATUS

PAUL MOYSE

Berlin

The final campaign rally of the Social Democratic party (SPD) was impressive. More than a thousand people gathered at Pariser Platz, waving red banners and posters that said things like "We Are for Frank" (referring to the party's candidate for chancellor, Frank-Walter Steinmeier) and "Bankers Would Vote for Merkel" (as in Christian Democratic chancellor Angela Merkel). A stage had been erected directly beneath the Brandenburg Gate and the sun was setting behind it. The weather could not have been any better—mild and sunny. (Such weather has a name: *Kaiserwetter*.)

There were musical acts. One band called Jazz Cantina specializes in transforming popular rock songs into jazz numbers. Their rendition of Van Halen's "Jump" defies description. There was a video montage showcasing German actors and other personalities praising Steinmeier. This was seemingly meant to convey that, as people like the American sociologist Norm Birnbaum and the actor who played Josef Goebbels in *Downfall* like Steinmeier, you should like him too.

When the candidate finally took the stage, he implored his supporters to come out and vote. He reminded everyone that his party was against the Iraq war and President Bush (who hasn't been president for some time, but so what). "The future is in our hands on the 27th of September," Steinmeier declared while sweating profusely. "And therefore I am telling you, two more days. This race, ladies and gentlemen, is again wide open. Everything is again wide open!" And although he didn't ask, "Where is the outrage?" he did say, "We need you!" Which they desperately did.

The most recent preelection polls had the Social Democrats below 30 percent, and when the election results came in the following Sunday evening, the SPD had received a mere 23 percent of the vote—its worst result since 1949. And while the Christian Democratic Union (CDU) and its sister party in Bavaria, the CSU (Christian Social Union), earned an unimpressive 33.8 percent, it was enough to govern thanks to its preferred coalition partner, the FDP (Free Democratic party), which ran on a pro-business platform of lower taxes and welfare reform and received a record 14.6 percent of the vote. As the headline in *Die Handelsblatt* put it, "The FDP Rescues Chancellor Merkel."

Yet the results do not mean a majority of Germans have decided to embrace free enterprise. While voters abandoned the SPD in droves—only 9 million Germans voted for

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the Social Democrats, down from 18 million in 2002—they didn't necessarily all turn to the right. According to an Infratest dimap poll, 2 million traditional SPD voters simply stayed home. Another 1.1 million turned to Die Linke, a recently formed far left party composed of leftist radicals, disenchanted Social Democrats, and former Communists, which won 11.9 percent of the vote, primarily in tahe east. In the state of Brandenburg, 27.2 percent of the populace voted for Die Linke despite eight of its candidates' being former Stasi informants. (In case you are wondering, Afghanistan was a nonissue in the election—though Die Linke was demanding immediate withdrawal—in part because the old government's foreign minister was Steinmeier of the SPD. Approximately 4,800 Bundeswehr soldiers are currently stationed in northern Afghanistan—the third largest deployment in that country—and troop strength may even increase to 7,000 depending on reauthorization.)

According to one poll, 67 percent of traditional SPD supporters consider their party to have betrayed its principles (one of which is "social justice," though a German pollster told me he still isn't quite sure what the phrase actually means). The sense of betrayal dates back to the days when former chancellor Gerhard Schröder advocated a series of domestic reforms called Agenda 2010. It was akin to President Clinton's signing the 1996 welfare reform bill.

But imagine not only that Democratic voters hadn't forgiven Clinton for welfare reform six years later, but also that a leading member of the Democratic party splintered off to form his own faction and took with him almost 12 percent of the vote. This is what former SPD chairman Oskar Lafontaine did when he formed Die Linke in 2007, merging with the PDS (the successor to the East German Communist party). This act of treason is also partly why a coalition involving the Social Democrats and the far left on a national level is unlikely for the foreseeable future—at a roundtable discussion following the recent elections, Steinmeier could barely look at Lafontaine.

For Merkel and the FDP's Guido Westerwelle (the incoming vice chancellor and foreign minister), the question is whether the new coalition is an opportunity to tackle serious reform, from lowering taxes and cutting wasteful spending to health care and relaxing restrictions on Germany's hiring and firing practices.

According to Marcus Pindur, an editor at Deutschlandradio, "Neither the Christian Democrats nor the Free Democrats can afford to disappoint their constituencies because the margins of victory are slim. The problem is that meaningful reforms go along with costs—less social security, more self-reliance. German voters are in their majority averse to that."

The Social Democrats received a mere 23 percent of the vote—their worst result since 1949. And while the Christian Democrats earned an unimpressive 33.8 percent, it was enough to govern thanks to the pro-business Free Democrats' receiving a record 14.6 percent of the vote.

Constanze Stelzenmüller, a senior fellow at the German Marshall Fund, is more skeptical:

> What [Merkel] has is a narrow mandate. She made it very clear in her first television appearance after the election that there were some things she wasn't going to change. She said she wasn't going to change the minimum wage or the health fund—those things her new coalition partner opposes. She said that she wanted to be the chancellor of all Germans and for her Christian Democrats to be a major popular party in the middle.

Time is also not on the side of the new government. A "layoff campaign" by companies across the country is looming. Manufacturing orders are plummeting. In addition, Stelzenmüller notes, "Of the two measures that have protected Germans somewhat from the economic crisis—the cash for clunkers scheme that protected the auto industry and the short-term work schemes which protected jobs—the first is already over and the short-term work schemes will be over soon."

Nevertheless, after four years of aimlessness with a coalition of the main left and right parties, the Germans have opted for (in Stelzenmüller's word) clarity. The dream of a consensus-seeking grand coalition government crafting sensible, moderate policies in uncertain times turned out to be just a dream. (Leaving Germany last week, an American friend joked, "The Grand Coalition ist kaputt!" At which a female security officer mumbled, "Believe me, it wasn't so grand.")

The power-sharing arrangement turned out to be detrimental to both major parties, and the minority parties, including the Greens, enjoyed record support in the election. Luckily for Frau Merkel, she is still the second-most popular politician in the federal republic and so remains in power. (The most popular is Karl-Theodor zu Guttenberg of the CSU, the 37-year-old economics minister considered a likely future chancellor.) On the other hand, says Marcus Pindur, the SPD is "perceived as being without orientation." SPD representative Karl Lauterbach told the press last week that his party "does not believe in itself and thus cannot persuade voters." It faces a grave dilemma of either moving toward the center or lurching further to the left.

Perhaps it was only fitting that at the final SPD rally, the band Jazz Cantina ended its set with a version of AC/DC's "Highway to Hell." ♦

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The Republican Revival

The leading indicators all point to major gains in the 2010 midterm elections. BY FRED BARNES

Ignore anyone who says Republicans have no chance of winning 40 seats in next year's midterm elections and grabbing control of the House of Representatives. A landslide of that dimension is quite possible. All it would take is for current political trends to continue. If that happens, Republicans will win the House in a landslide. The Senate is another story.

The deep trouble that's beginning to engulf Democrats is now an inescapable fact of political life. With the congressional election 13 months away, Democrats have time to halt their decline and prevent a Republican surge. But they've shown no signs of reversing their slide. In 2006 and 2008, they were on offense. Today they're stuck on defense.

Predicting the outcome in 2010 is partly guesswork. The political climate, the number of open seats, and the quality of candidates a year from now—those are unknowns. Nonetheless, a strong drift toward Republicans is clear. If the election were held today, the best guess is Republicans would win 15 to 25 House seats.

Democrats can point to successes. Their fundraising matches or exceeds that of Republicans. Voter registration has tilted in their favor. And they've won impressive majorities among young voters, Hispanics, and the highly educated in the past two elections.

But those are lagging indicators. In looking to 2010, it's the leading indicators that matter, and Republicans are doing extraordinarily well in all of them. Let's take a look at five of these indicators.

Fred Barnes is executive editor of THE WEEKLY STANDARD.

Two are especially significant: the so-called generic ballot and presidential approval. Political scientist Alan Abramowitz of Emory University explains their relevance: "The more popular the president and the better the president's party performs on the generic ballot question, the fewer seats the president's party can expect to lose in both the House and the Senate."

In polling, the generic question asks which party respondents intend to vote for in the next election. Republicans trailed Democrats for most of 1994. "When we took the lead, we took the majority in the House," says California Republican representative Kevin McCarthy, the chief recruiter of candidates for House seats.

For the 2010 cycle, Republicans are already in the lead. In the Rasmussen poll, Republicans jumped narrowly ahead of Democrats last spring for the first time since 2004. And they've held their lead. Last week, they topped Democrats by 42 percent to 40 percent.

Meanwhile, President Obama's approval ratings have fallen precipitously. In the Gallup poll, he began his presidency with 68 percent approval. Now his rating hovers in the low 50s. In last week's Fox News poll, Obama's approval was 50 percent. Several polls have put it briefly in the high 40s.

The 50 percent level is important. The history of midterm elections suggests that Republican gains will be held to the post-World War II average of 26 seats or fewer if Obama can keep his approval in the 50s. If it dips to the low 40s, that correlates with a pickup of roughly 40 seats by Republicans, giving them a majority in the House.

Based on his forecasting model (and using current political trends), Abramowitz says Democrats are likely to lose at least 15 House seats in 2010 "and their losses could go as high as 30-40 seats." A loss of 3 to 4 Senate seats—which would mean a Republican gain of 3 to 4 seats—is "entirely possible," he says. Should Obama's approval recover and reach the 60s and Democrats go ahead on the generic ballot, Republicans would win 15 seats in the House while losing a Senate seat, according to Abramowitz.

The other leading indicators are less predictive but still compelling. On party identification, Republicans trail Democrats by the smallest margin since 2005. In Gallup recently, 48 percent identified with Democrats, 42 percent with Republicans. In 2008, Democrats led 53 percent to 39 percent. Last week, the Fox News poll found Democratic identification at 41 percent, Republican at 37 percent.

Republicans appear to be more intense than Democrats in their political involvement now, and this factor is measurable by how closely one is paying attention to national political news. In 2005, 26 percent of Republicans were following news "very closely." Now 41 percent are, but only 30 percent of Democrats. The greater the intensity, the more likely one is to vote.

Similarly, the better a party does in attracting independents, the better its chances of winning elections. In 2008, Obama won independents by 8 points. Now they've turned against him, disapproving of his performance as president by 46 percent to 41 percent in the *Wall Street Journal*/NBC News poll. Gallup found that more independents are currently "Republican-leaning" (15 percent of the electorate) than "Democratic-leaning" (13 percent). Two years ago, Democratic leaners led among independents, 20 percent to 12 percent.

Pollster Neil Newhouse says many of the independents moving away from Obama and Democrats are former (soft) Republicans returning home. "You'd expect to see independents going first." If they were

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balking, Republican prospects would be dimmer.

Independents will play a pivotal role next year because they're clustered disproportionately in swing districts, precisely where Democrats captured dozens of House seats in 2006 and 2008. Democrats hold 84 seats in districts won by President Bush in 2004 or John McCain in 2008, and 48 in districts won by both.

With these seats in mind, Republicans have become ambitious in candidate recruitment. They tried to get ex-football coach and TV analyst Lou Holtz to seek a House seat in Florida. He declined. They're eager for Capt. Chesley (Sully) Sullenberger, who piloted his airliner to a safe landing in the Hudson River last January, to run in California. He's undecided.

McCarthy says attractive candidates have begun to sign on as Republican chances of success in 2010 have improved. If Republicans win the governor's races in Virginia and New Jersey next month—they lead in both states—many more will choose to run, he says. In the 1994 Republican landslide, 51 of the 74 freshman Republicans who were elected had waited until after Republicans won in Virginia and New Jersey to announce their candidacies.

The political circumstances in 2010 may not be as promising for Republicans as they were in 1994. Fewer Democrats are retiring, thus fewer seats are open. And Democrats have enlarged their base.

But Republicans are sure to benefit from a windfall: the explosion of populist opposition to Obama, congressional Democrats, and their liberal agenda. Some of these opponents are Republicans, but many of them aren't. They're ex-Perot backers or unaffiliated conservatives.

Put the populists together with Republicans and independents now leaning Republican and you have a majority coalition. It hasn't fully coalesced yet. But there's a possibility, even a good possibility, it will. In that case, the prospect of Republicans' winning 40 seats becomes quite credible. ♦

Don't Go Wobbly on Afghanistan

President Obama was right in March.

BY FREDERICK W. KAGAN & KIMBERLY KAGAN

'To defeat an enemy that heeds no borders or laws of war, we must recognize the fundamental connection between the future of Afghanistan and Pakistan—which is why I've appointed Ambassador Richard Holbrooke . . . to serve as Special Representative for both countries." That "fundamental connection" between Afghanistan and Pakistan was one of the important principles President Obama laid out in his March 27, 2009, speech announcing his policy in South Asia. It reflected a common criticism of the Bush policy in Afghanistan, which was often castigated as insufficiently "regional." It also reflected reality: The war against al Qaeda and its affiliates is a two-front conflict that must be fought on both sides of the Durand Line.

Now, however, some of the most vocal supporters of the regional approach are considering—or even advocating—a return to its antithesis, a purely counterterrorism (CT) strategy in Afghanistan. Such a reversion, based on the erroneous assumption that a collapsing Afghanistan would not derail efforts to dismantle terrorist groups in Pakistan, is bound to fail.

Recent discussions of the "CT option" have tended to be sterile, clinical, and removed from the complexity of the region—the opposite of the coherence with which the administration had previously sought to address the problem. In reality, any "CT option" will likely have to be executed against the backdrop of state collapse and civil war in Afghanistan, spiraling extremism and loss of will in Pakistan, and floods of refugees. These conditions would benefit al Qaeda greatly by creating an expanding area of chaos, an environment in which al Qaeda thrives. They would also make the collection of intelligence and the accurate targeting of terrorists extremely difficult.

If the United States should adopt a small-footprint counterterrorism strategy, Afghanistan would descend again into civil war. The Taliban group headed by Mullah Omar and operating in southern Afghanistan (including especially Helmand, Kandahar, and Oruzgan Provinces) is well positioned to take control of that area upon the withdrawal of American and allied combat forces. The remaining Afghan security forces would be unable to resist a Taliban offensive. They would be defeated and would disintegrate. The fear of renewed Taliban assaults would mobilize the Tajiks, Uzbeks, and Hazaras in northern and central Afghanistan. The Taliban itself would certainly drive on Herat and Kabul, leading to war with northern militias. This conflict would collapse the Afghan state, mobilize the Afghan population, and cause many Afghans to flee into Pakistan and Iran.

Within Pakistan, the U.S. reversion to a counterterrorism strategy (from the counterinsurgency strategy for which Obama reaffirmed his support as recently as August) would disrupt the delicate balance that has made possible recent Pakistani prog-

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ress against internal foes and al Qaeda.

Pakistani president Asif Ali Zardari, army chief of staff General Ashfaq Kayani, and others who have supported Pakistani operations against the Taliban are facing an entrenched resistance within the military and among retired officers. This resistance stems from the decades-long relationships nurtured between the Taliban and Pakistan, which started during the war to expel the Soviet Army. Advocates within Pakistan of continuing to support the Taliban argue that the United States will abandon Afghanistan as it did in 1989, creating chaos that only the Taliban will be able to fill in a manner that suits Pakistan.

Zardari and Kayani have been able to overcome this internal resistance sufficiently to mount major operations against Pakistani Taliban groups, in part because the rhetoric and actions of the Obama administration to date have seemed to prove the Taliban advocates wrong. The announcement of the withdrawal of U.S. combat forces would prove them right. Pakistani operations against their own insurgents—as well as against al Qaeda, which lives among those insurgents—would probably grind to a halt as Pakistan worked to reposition itself in support of a revived Taliban government in Afghanistan. And a renewed stream of Afghan refugees would likely overwhelm the Pakistani government and military, rendering coherent operations against insurgents and terrorists difficult or impossible.

> In reality, any counterterror action would have to be executed against the backdrop of state collapse and civil war in Afghanistan, spiraling extremism and loss of will in Pakistan, and floods of refugees. These conditions would benefit al Qaeda greatly by creating an expanding area of chaos.

The collapse of Pakistan, or even the revival of an aggressive and successful Islamist movement there, would be a calamity for the region and for the United States. It would significantly increase the risk that al Qaeda might obtain nuclear weapons from Pakistan's stockpile, as well as the risk that an Indo-Pakistani war might break out involving the use of nuclear weapons.

Not long ago, such a collapse seemed almost imminent. Islamist groups operating under the umbrella of the Tehrik-e Taliban-e Pakistan (TTP), led by Baitullah Mehsud until his recent death, had occupied areas in the Swat River Valley and elsewhere not far from Islamabad itself. Punjabi terrorists affiliated with the same group were launching attacks in the heart of metropolitan Pakistan.

Since then, Pakistani offensives in Swat, Waziristan, and elsewhere have rocked many of these groups back on their heels while rallying political support within Pakistan against the Taliban to an unprecedented degree. But these successes remain as fragile as the Pakistani state itself. The TTP and its allies are damaged but not defeated. Al Qaeda retains safe-havens along the Afghan border.

What if the United States did not withdraw the forces now in Afghanistan, but simply kept them at current levels while emphasizing both counterterrorism and the rapid expansion of the Afghan security forces? Within Afghanistan, the situation would continue to deteriorate. Neither the United States and NATO nor Afghan forces are now capable of defeating the Taliban in the south or east. At best, the recently arrived U.S. reinforcements in the south might be able to turn steady defeat into stalemate, but even that is unlikely.

The accelerated expansion of Afghan security forces, moreover, will be seriously hindered if we fail to deploy additional combat forces. As we discovered in Iraq, the fastest way to help indigenous forces grow in

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numbers and competence is to partner U.S. and allied units with them side by side in combat. Trainers and mentors are helpful—but their utility is multiplied many times when indigenous soldiers and officers have the opportunity to see what right looks like rather than simply being told about it. At the current troop levels, commanders have had to disperse Afghan and allied forces widely in an effort simply to cover important ground, without regard for partnering.

As a result, it is very likely that the insurgency will grow in size and strength in 2010 faster than Afghan security forces can be developed without the addition of significant numbers of American combat troops—which will likely lead to Afghan state failure and the consequences described above in Afghanistan and the region.

The Obama administration is not making this decision in a vacuum. Obama ran on a platform that made giving Afghanistan the resources it needed an overriding American priority. President Obama has repeated that commitment many times. He appointed a new commander to execute the policy he enunciated in his March 27 speech, in which he noted: "To focus on the greatest threat to our people, America must no longer deny resources to Afghanistan because of the war in Iraq." If he now rejects the request of his new commander for forces, his decision will be seen as the abandonment of the president's own commitment to the conflict.

In that case, no amount of rhetorical flourish is likely to persuade Afghans, Pakistanis, or anyone else otherwise. A president who overrules the apparently unanimous recommendation of his senior generals and admirals that he make good the resource shortfalls he himself called unacceptable can hardly convince others he is determined to succeed in Afghanistan. And if the United States is not determined to succeed, then, in the language of the region, it is getting ready to cut and run, whatever the president and his advisers may think or say. That is a policy that will indeed have regional effects—extremely dangerous ones. ♦

Labour's Last Gasp

Gordon Brown still wants to tax-and-spend.

BY IRWIN M. STELZER

Britain's Labour party has come a long way from 1994, when a charismatic Tony Blair, the new leader of a party then in opposition, forced through the repeal of clause four of its constitution—the one that promised nationalization of the means of production and distribution. Not all of the comrades, as they styled themselves, were pleased, but after 15-going-on-18 years in the wilderness the sweet smell of a return to power induced at least a temporary suspension of faith in red-in-tooth-and-claw socialism. Blair appealed to the blue-rinse ladies of Middle England in a way that prior Labour leaders had not. And in a way that Gordon Brown, the senior partner in the Brown-Blair relationship, could not. So Brown had agreed not to contest the leadership, in return for a promise that, as chancellor of the Exchequer in the next Labour government, he would have complete control of economic policy.

The combination of a smiling Blair and a Brown pledged to restore his party's lost reputation for fiscal prudence by holding the line on spending proved a winning combination. In 1997, Labour displaced the sleaze-ridden, worn-out Tories, riven with feuds since deposing Margaret Thatcher in 1990. Building on the solid economic foundation willed to them by Thatcher, Blair and Brown profited from a growing economy—though Brown made the unfortunate boast that he had eliminated the cycle of "boom and bust."

The period of peace within the usually fractious Labour party was broken when Blair decided to lead the party into a third general election in 2005, denying Brown the leadership the chancellor claimed he had been promised. It is difficult to describe the ensuing rancor between these partners, as Brown pressed Blair to step down, and Blair refused to do so. You had to be there. I remember once popping into No. 10 Downing Street to see the prime minister, only to run into Brown, who asked what I was doing there. I responded by asking how he had managed to cross the barbed wire between the PM's digs and the chancellor's, at No. 11. He was not amused.

There were brawls over every aspect of policy. Blair wanted to reform the public services to make them consumer- rather than producer-driven; Brown felt that parents and patients lacked sufficient knowledge to make intelligent choices of schools and courses of medical treatment. Blair wanted to adhere strictly to his campaign promise not to raise taxes; Brown insisted that the promise applied only to income taxes and proceeded to impose some 60 "stealth taxes" that directed 5 percent more of the nation's income to the Treasury than it had collected in the Thatcher years. Only when Brown wanted to raise the marginal tax rate on high earners from 40 percent to 50 percent did Blair fight back.

Brown finally prevailed in 2007, forcing Blair, his popularity eroded by time and his backing of George W. Bush's Iraq policy, to step down.

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Brown was finally in command—no general election needed, since the leader of the majority party is designated by the queen as her first minister—and the spending spigots were opened. Flash forward: When Labour met in Brighton last week for its annual conference, it trailed the Tory party by up to 20 points in the polls, and in some was running third behind both the Tories and the Liberal Democrats.

What happened on the way to a fourth Labour term? Time is not kind to a party that has been in power for more than a decade: It runs out of intellectual energy and becomes corrupt. And if it is soft on crime—Brown refused to fund an adequate prison construction program—it will be blamed for the social ills that see street crime soaring, alcoholism on the rise, feral children prowling the streets, and third-generation families on the dole.

Brown, moreover, has nothing like Blair's fine, light touch. He is so uncomfortable on television that it is said that he has taken lessons in smiling but didn't get to the part where he learns when to smile. He is impatient with subordinates, dour as the son of any Scottish manse might be, and clannish: hardly a crowd-pleaser. Which may be why he cancelled plans to hold a snap election in the autumn of 2007 after the polls showed he might lose—adding cowardice to the other charges against him.

And then there is the recession. Brown can rightly claim to have taken sensible steps to cope with it—bank bailouts, stimulus spending, the usual Keynesian measures—but his earlier spending spree and refusal to save in the fat years left the country's finances in a state that has the rating agencies considering downgrading British sovereign debt.

So when Brown strode to the podium at last week's conference, he had a tough job—energize the faithful who were walking the corridors seeing defeat as inevitable, and woo back some of the Middle England voters Labour has antagonized with everything from its wild expansion of the public sector and stealth taxes to its ban on fox hunting.

Everyone is agreed that Britain's fiscal condition is unsustainable, and the budget gap must be closed. This means some combination of spending cuts and tax increases. Brown decided that his ticket to his first victory in a general election—he has never had to face the British electorate, his position being the gift of his party—is to spend and tax.

He told the conference that he would increase the minimum wage every year—in the face of record teenage unemployment. He will spend more, not less, on schools—even though his schools minister says he can make do with £2 billion less. He will set up a £1 billion "innovation fund" to encourage "the creativity and inventions that are essential to the economy," while at the same time charging entrepreneurial foreigners working in Britain, in addition to U.K. income taxes, £30,000 each (spouses also have to pay) for the privilege of being there.

"Child benefit and child tax credits for families will continue to rise every year," Brown promised, although officials are saying privately that the child tax credit will actually be cut for all save low-income families. All this spending, according to Brown, is to be paid for by the usual rooting out of waste—shades of Barack Obama's health care plan—and, more important, higher taxes. "We will raise tax at the very top," to 50 percent. At present, the marginal rate of 40 percent applies to earnings in excess of £35,000 (about $60,000); Brown would add a bracket—50 percent on earnings in excess of £150,000 (around $240,000). (The top U.S. federal rate of 35 percent cuts in at $372,950 for an individual.) So an additional £10,000 would net the earner £5,000, and if he decides to spend it, 17 percent of that remainder will be absorbed by VAT, the national sales tax, leaving a bit more than £4,000 in spending power. The rest will be fed into Brown's spending and income redistribution machine.

Brown believes that Labour can contrast this plan to tax and spend with the Tories' plan—to be firmed up at this week's party conference in Manchester—to cut some spending and, as the economy moves to sustainable recovery, reduce the tax burden.

This might sound odd, unless you know Gordon Brown. After all, the recession has not produced a European lurch to the left. Spain's leftish government is in deep political difficulty despite, or perhaps because of, an unemployment rate approaching 20 percent. Angela Merkel just won reelection in Germany, and in the process acquired a tax-cutting, free-market coalition partner to replace the left-wing group with which she has had to cohabit. Nicolas Sarkozy has pushed ahead with reforms in France, and Silvio Berlusconi remains popular in Italy despite the country's economic troubles and his well-publicized escapades.

But that matters not to Brown, who has a deep conviction that he has been put on earth to be his brother's keeper. He often says that he refuses to walk on the other side of the road if someone is in need. He does not believe that British voters prefer lavish lifestyles to greater social justice. All admirable. But he also does not believe that people work for money, at least beyond a certain income level, and that higher taxes reduce incentives to risk-taking and entrepreneurship. They wouldn't for him, and in arguments he often points out that they don't seem to for me and my rich American friends.

Nor does he believe that government is incapable of accomplishing some of his goals—in particular, he scoffs at reports of inefficiencies at the lumbering NHS, which employs 1.5 million people, more than any institution except the Chinese Army, the Indian railway, and Wal-Mart. In short, he is an old-fashioned, unabashed, high-spending, high-taxing, big-government redistributionist. He has seen the past, and it worked. Now it is up to Britain's voters to decide between his views and those of the modern, public relations-savvy, Old Etonians who run the Tory party. ♦

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Détente and the Bunker

How to oppose a president's disastrous foreign policy. BY ELLIOTT ABRAMS

The appearance in Washington last week of Iran's foreign minister, while the blood is not yet dry from his government's continuing suppression of student protests, is a reminder of the disastrous foreign policy path the Obama administration has chosen. Not so long ago, proponents of a stronger U.S. foreign policy faced a similar policy of weakness and accommodation. The 1970s saw some pretty dark days of "détente"—when Gerald Ford refused to see Alexander Solzhenitsyn; when the United States allowed Cuban troops to flow into Angola; and when, in the single year of 1979, Jimmy Carter watched a small band of would-be commies take Grenada, the Sandinistas take Nicaragua, and the Soviets go into Afghanistan—not to mention the shah's fall and the Ayatollah Khomeini's takeover of Iran.

One begins to wonder how far we will drift into a new period of generalized disaster. In Honduras, we back the Hugo Chávez acolyte and say we won't respect November's free elections. In Israel, we latch on to the bizarre theory that settlement growth is the key obstacle to Middle East peace and try to bludgeon a newly elected prime minister into a freeze that is politically impossible—and also useless in actually achieving a peace settlement. In Eastern Europe, we discard a missile defense agreement with Poland and the Czechs and leave them convinced we do not mean to fight off Russian hegemony in the former Soviet sphere.

Elliott Abrams is a senior fellow for Middle Eastern studies at the Council on Foreign Relations and served in the Reagan and George W. Bush administrations.

Manouchehr Mottaki, foreign minister of Iran, visited Washington, as noted, after such visits had been forbidden for a decade. High-ranking American officials have made six visits to Syria, even while the government of Iraq and our commanding general there complain of Syrian support for murderous jihadists. The highest ranking U.S. official to visit Cuba in decades recently toured Castro's tropical paradise. The president won't see the Dalai Lama, however, for fear of offending the Chinese.

See a pattern here? The president's U.N. General Assembly speech tied all this together, perhaps unintentionally: Talk of allies and enemies and national interests was absent. Getting something for concessions we make is contrary to the new spirit of engagement. The president, transcending all such anachronisms, poses as the representative of . . . the world. So why would his country treat friends better than foes, and why would we bargain for reciprocal concessions? So old fashioned, so Cold War.

Henry M. "Scoop" Jackson

Instead, he told us, "I am well aware of the expectations that accompany my presidency around the world. These expectations are not about me. Rather, they are rooted—I believe—in a discontent with a status quo that has allowed us to be increasingly defined by our differences." (Did speechwriters substitute "discontent" for Carter's famous "malaise"?) So we will turn away from such thinking: "It is my deeply held belief that in the year 2009—more than at any point in human history—the interests of nations and peoples are shared." Acting in the narrow interests of the United States and its friends and allies is passé: "Because the time has come for the world to move in a new direction. We must embrace a new era of engagement based on mutual interests and mutual respect, and our work must begin now." This must sound to Ahmadinejad—or Putin or Assad or Chávez or Castro—rather the way Carter's call to end our "inordinate fear of communism" sounded to Brezhnev.

To those who do care about the interests of this country and its friends and allies, it should sound like a call to arms, leading us to ask how successful struggles to change America's foreign policy were waged in the past. In the 1970s, the headquarters of resistance to détente and its associated blunders was Room 135 in the Old Senate Office Building, which housed the foreign policy and national security staff of Democratic senator Henry M. "Scoop" Jackson.

I worked on Jackson's personal staff, next door. We called Room 135 "the Bunker" because the senator and "Scoop's Troops" were regularly assaulted by all right-thinking, liberal, cosmopolitan, Establishment voices. We were for war. We were for violence. We opposed diplomacy. We were backward, primitive, dangerous. We were (of course) advancing Israeli interests, not American interests. The majority in the Democratic party, which had nominated George McGovern in 1972, reviled us. After Carter's election in 1976, he soon hated us as much as Ford and Nixon had, so at least the attacks were nicely bipartisan.

The Bunker is worth remembering because, as we enter an equally depressing and perilous period in

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foreign policy, we can learn from those previous years of opposition. Jackson was opposing détente in an organized fashion by 1972 and fought on until Ronald Reagan buried it eight years later. The current fight may take as long. Jackson led a bipartisan effort. For the moment, ours appears to be located exclusively in the Republican party, but that will change as the administration careens from failure to failure and Democratic politicians seek a bit of distance.

Jackson had a small staff but a wide network on the Hill (at a time when his party controlled both the Senate and the House). Republicans up there today need to be sure their own staffs are tightly linked and able to resist the implementation of policies that harm U.S. interests. Jackson and his troops understood that an informal network of capable, dedicated Hill staffers is an invisible but powerful tool, effective across party lines.

Times change. Cable news and the Internet alone have transformed the way outreach to the American people can be accomplished. But at bottom, the Jackson model is a good one. Get set for a long fight, try to reach across party lines, have confidence in the American people, and be immune to the criticism of "the best and the brightest." If Scoop were alive, he'd be shaking his head in chagrin over our current foreign policy—and telling his troops to saddle up.

But he'd be smiling, too, because he liked a good fight and trusted that common sense about our national security would win out. And that's the final lesson, of Reagan as well as Scoop Jackson: Be of good cheer. No whining, no nasty personal attacks. It's a political mistake, it's unattractive, it's self-defeating, and it's unwarranted. The American people think our country is indeed "defined by our differences" with murderous Islamist groups and repressive regimes. They don't agree that our "interests are shared" with such groups, and they believe friends deserve better treatment than enemies. We're on the American people's side, and they're on ours in this struggle over our country's relations with the world. ♦

If Darwin Ran Baseball

A modest proposal for ensuring that the best teams play in the World Series. BY WILLY STERN

The modern World Series began in 1903 with the Boston Americans beating the Pittsburgh Pirates five games to three in a grueling 13 days. (Boston's rubber-armed Bill Dinneen pitched four complete games, winning three with two shutouts.) For much of their storied histories, the National and American Leagues simply sent their best team to the World Series. The quirky best-of-nine format was used again from 1919–21, but the rest of the years, the first squad to win four games was crowned the champs and went home to a parade and bragging rights. Clean and easy.

We purists miss those days. But a simple seven-game series was terrible for maximizing television revenues and ticket sales. And, like it or not, the almighty chase for income drives sporting decisions. Today, Major League Baseball has an eight-team playoff format with a potential for 41 playoff games. This churns out money and allows a few more teams a shot at playing meaningful games deep into autumn. But it also means that the best team no longer necessarily wins, or even makes it to, the World Series. This is silly, and fixable.

The first round of the playoffs is fraught with danger for a quality team, as the winner must take three out of five games. A mediocre team with two dominant starting pitchers can easily defeat a balanced club of quality starters built to win 100 games over a season. Why? Because these two hurlers may well pitch four of the five games. Take this year's American League. Perhaps the most dangerous team is the Detroit Tigers, despite having the worst record among playoff-bound American League squads. Why? Because the Tigers boast an indomitable starting pitcher in Justin Verlander and a very talented number two in Edwin Jackson.

Baseball is also the sport where it is least likely that the best team will win any given contest. Consider the winning percentages of the eight best teams in the other major sports in their latest regular season: NBA (71 percent), NFL (73 percent), and NHL (68 percent, excluding ties). By contrast, as of this writing, the best eight teams in Major League baseball have only won 59 percent of their games. Even in baseball's final two playoff rounds, where four victories are needed, the better team isn't as likely to advance as in the other major professional sports.

Then there's the cockamamie way the playoff teams are selected. The winner of each league's three divisions marches on. The coveted fourth and final spot goes to the second-place team with the best record: the "wild-card" entry.

The problem, of course, is that a weak division can send a run-of-the-mill team to the playoffs, whilst a superior club in a strong division goes home. Consider the 2005 San Diego Padres, which "won" the National League West with a pedestrian 82-80 record. Meanwhile, the Philadelphia Phillies, winners of 88 games in the more accomplished East Division, did not make it to the postseason. Consider, too, that the Florida Marlins have taken home two World Series trophies but have never won a division title.

Craig Robinson, proprietor of flip-

Willy Stern taught a short course on "Baseball, Ethics, and American Society" at Carleton College last year.

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flopflyball.com, has made a study of the correlation of regular-season baseball records to World Series success, since the wild card was introduced. His findings:

- The team with the best record in baseball has only won the World Series once (1998 Yankees). The 2007 Red Sox tied with the Cleveland Indians for the best record and also won the series.
- The playoff team with the worst record has won two World Series (2000 Yanks and 2006 Cardinals).
- Only in 1995 did the teams with the best record even meet in the World Series (Indians and Braves).
- In only three seasons did the best eight teams go on to the playoffs (1996, 2002, and 2004).

These don't exactly inspire a vote of confidence in the current system.

To be fair, baseball is not alone in this divisional foolishness. The NFL's New England Patriots were famously denied a playoff spot last year after finishing 11-5, while the 8-8 San Diego Chargers played on. The Golden State Warriors of the NBA's powerful Western Conference posted a nifty 48-34 record in the 2007-08 season, yet missed the playoffs while the hapless Atlanta Hawks, 37-45 in the lowly Eastern Conference, made them. Ridiculous, of course, but it's baseball we're here to mend.

The 2003 Marlins celebrate a title.

A weak division can send a run-of-the-mill team to the playoffs: The Florida Marlins have taken home two World Series trophies but have never won a division title.

Here's a modest proposal to make the protracted regular-season schedule meaningful again and reward the best Major League baseball clubs:

Stay with an eight-team playoff format, four per league. Neither the owners nor the players' union—both quite reasonably driven by money—will squabble as those all-important TV revenues keep flowing.

Do away with the divisions. Send the four best teams in each league to the playoffs. Don't fret, Red Sox and Yankee fans: To satisfy regional rivalries, Major League Baseball's schedulers can still arrange more games against traditional rivals.

Give the better team a leg up. In the first round of the playoffs, the team with the best record in each league would square off versus the club with the fourth-best record, while the second and third seeds would pair off. In each round, the winner is the first team to attain four victories. But here's the kicker: In the first two rounds of the playoffs, the team with the better record is automatically awarded a victory before the games start. The better team over a 162-game season must, then, win just three of six, whilst the lesser team must prevail in four out of six. This new format could further favor the better regular-season squad by giving that side a decided home field advantage. Of the potential six games played in each series, the first two could be at the better team's home park, followed by two away, then two back home.

The World Series would remain a four-of-seven affair. I don't much like the midsummer All-Star game's determining home-field advantage for the series. Whichever team has the better record during the regular season should have that plum for the World Series. (The All-Star game outcome would only matter in the unlikely event that both leagues sent teams to the World Series with identical regular-season records.)

I'll save the bean-counters the trouble of doing the math on possible lost TV revenues: There aren't any. In fact, there's a potential for two additional playoff games—if every series were to go the distance. And many more regular-season games would suddenly matter. Maybe even matter a lot. No more could a well-heeled team get away with clinching its division with three weeks to go and trotting out Triple-A players while resting its regulars down the homestretch. Who'd want to risk forgoing an automatic playoff victory or two? And think of the fan interest, both in terms of gate receipts and television viewers, as the 162-game marathon wound to a tense close.

And speaking of that 162-game season, I'd also like to advocate for chopping the schedule back to the old 154 games. Sure, a shorter season would be a tricky sell with players and owners alike. But playing a warm-weather sport with ski gloves in 37-degree temps makes a mockery of the World Series.

Voilà. Regular season performance would once again seriously matter. The best club would have a better chance of being crowned World Series champs. Survival of the fittest? Not exactly. But this format would at least aid in the ultimate survival of the team with the superior pitching, hitting, and fielding. Charles Darwin would approve. So would Casey Stengel. How 'bout it, Bud? ♦

NEWSCOM

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All the President's Czars

Obama emerges as a champion of the unitary executive. BY STEVEN MENASHI

A bipartisan chorus in Congress, along with a bevy of conservative activists, has denounced President Obama for appointing an unprecedented number of "czars"—special advisers, envoys, deputies, and board chairmen who coordinate the policy efforts of the White House but are not subject to congressional oversight. Because the czar posts are created and filled by the White House, appointees are not confirmed by the Senate and do not report their activities to any congressional committee.

Two czar-related scandals recently brought attention to their presence in the administration. Steven Rattner, the Wall Street financier who led the executive branch's efforts to save General Motors and Chrysler, resigned as "car czar" amid controversy over an investigation into his former firm. Van Jones, Obama's pick for "green jobs czar," turned out to have a checkered past on the political fringe. But many other czars continue to craft public policy under the direction of the president alone.

There is a czar to chart the course to economic recovery, a czar to facilitate the closure of Guantánamo Bay, and a czar to promote efficiency in government. There are czars to help formulate the president's policies with respect to Afghanistan, Sudan, and the Middle East peace process. Another czar tackles health care reform, another aims to improve border security, and another coordinates the administration's climate change, energy, and environmental policies. Others address terrorism, domestic violence, education, urban affairs, cybersecurity, faith-based initiatives, and a host of other issues.

In February, Senator Robert Byrd (D-WV) issued a press release identifying himself as "the constitutional conscience of the Senate" and touting a letter he sent to Obama to express his concern. "The rapid and easy accumulation of power by White House staff can threaten the constitutional system of checks and balances," Byrd wrote. "As presidential assistants and advisers, these White House staffers are not accountable for their actions to the Congress, to cabinet officials, and to virtually anyone but the president."

More recently, Senator Kay Bailey Hutchison (R-TX) insisted that the scandal surrounding Jones's resignation would have been prevented had he been vetted through a Senate confirmation. "It is Congress's duty to know who is serving at the highest levels of government, what they are doing, and what qualifications or complications these people bring to the job," she wrote. "The deployment of this many czars sets a dangerous precedent that undermines the Constitution's guarantee of separated powers. It must be stopped."

Yet when the executive branch formulates policy through czars accountable only to the president, does that not leave the legislative and executive powers more separate, rather than less? Congress may reject whatever policies the president formulates with the aid of his czars, of course, but Byrd and Hutchison want the legislature to oversee policy formulation within the executive. That seems to be the greater threat to separated powers.

Senators expect to exercise such oversight because Congress has intruded upon the executive branch throughout the last half-century. Since the expansion of the federal bureaucracy during the New Deal, agencies nominally within the executive branch receive mandates directly from Congress, bypassing the president. So executive authority, which Alexander Hamilton expected to be characterized by energy and dispatch, is fragmented and divided between the president, Congress, and agency heads invested with their own independent authority. It's not surprising that presidents, who are after all elected to implement new policies, have responded to the fragmented executive by seeking independent advisers who can help formulate policy and monitor the bureaucracy in hopes of keeping it in line. FDR had his Brain Trust; Obama has his czars.

Czars who advise the president in this way have no authority of their own. They can't execute or administer the laws, but only help the president decide how he might do so. So they're not principal "Officers of the United States," subject to Senate confirmation, but the president's own staff. A team of czars can't prevent congressional oversight of the federal agencies that actually implement policy, but by centralizing policymaking in the White House, the czars increase the likelihood that agencies will respond to presidential leadership.

Among "ingredients that constitute energy in the executive" Hamilton counted "unity," meaning a single president. "This unity may be destroyed," he wrote, by vesting the executive power "ostensibly in one man, subject in whole or in part to the control and co-operation of others, in the capacity of counselors to him," such as executive officers accountable to Congress. The Founders warned that Congress would attempt to colonize the other branches. "The legislative department is everywhere extending the sphere of its activity, and drawing all power into its impetuous vortex," reads Federalist 48. "The great security against a gradual concentration of the several powers in the same department," according to James Madison, "consists in giving to those who administer each department

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the necessary constitutional means and personal motives to resist encroachments of the others."

Every president surely has an interest in formulating his own policy agenda. By establishing policy czars accountable only to himself, Obama has sought to unify executive policymaking and guard against bureaucratic and congressional usurpation. For all the hullabaloo surrounding Dick Cheney, Joe Biden, and the "unitary executive theory" in the last election, Barack Obama has emerged as the leading champion of the unitary executive in practice and—against his congressional critics—the defender of separated powers. ♦

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I certify that all information furnished above is true and complete.
Terry Eastland, Publisher

The Mania of Central Planning

Thinking big is killing Michigan's economy.

BY ELI LEHRER

Lansing, Mich.

Coleman Young II is on a roll. Standing outside of the Michigan legislature's baronial house chamber, the young politician, son of Detroit's longtime mayor and now state representative for a portion of Detroit's downtown, lists a wide variety of big ideas for his home city. "The green economy has tremendous promise for the city: windmills, algae, and ethanol. We can do it. We have the workforce. We have the talent," he begins. He continues with a long string of big projects, initiatives, and laws to revitalize his struggling city: a high-speed rail link with Ann Arbor, new highways, better schools, and hiring mandates on new projects. "You really got me going. We're resilient," he concludes.

For all Young's infectious enthusiasm, his state doesn't seem resilient. By just about every measure, Michigan has America's worst economy. Unemployment stands at 15.2 percent. Since 2001 alone, 110,000 people have fled the state. Incomes have declined. In 1999, Michigan's per-capita production ranked 16th in the country. Today, it's tied for 34th.

In some ways, the causes of Michigan's precipitous decline are obvious: The state has lost lots of industrial jobs and has taxes, union politics, and regulations that make it unattractive for new businesses to locate there. But neither the deindustrialization that raises left-wing ire nor the taxes-and-spending bugbears of the right can fully explain the state's decline. Instead, Michigan's economic growth seems strangled by a state bureaucracy that favors bigness and overindulges in central planning.

Take deindustrialization. While the state has lost more than half a million manufacturing jobs, sectors not plausibly linked to manufacturing (mining, agriculture, and financial services) have also declined. Except for education and health services—a sector that grew nationally even in 2008's otherwise collapsing economy—Michigan shows an across the board, continuous, decade-long decline in each of the 11 major sectors of private employment that the Bureau of Labor Statistics tracks.

But if the left's arguments don't wash, the right's reflexive fallbacks can't explain everything either. Michigan's business tax climate isn't good but, according to the Tax Foundation, it has actually improved a bit in recent years. And while still mighty, union influence has declined in recent years. Aggressive government unions in states like California, New York, and Washington pack more political clout than the shrinking industrial unions in Michigan. Although a devastated economy, state spending limitations, and a Republican state senate gave her little choice, Democratic governor Jennifer Granholm has cut both taxes and even spending by some measures.

So why is Michigan's economy so bad? The answer may lie in a mania for big projects, big business, and central planning. In fact, if big projects made for a healthy economy, Michigan would be booming. Over the past three decades, Detroit has gained a Jetsons-like people mover in its downtown, three new sports stadiums, a Las Vegas-style casino district, and two huge new auto plants. The same "big-time" mania infects every corner of the state.

Eli Lehrer is a senior fellow at the Competitive Enterprise Institute.

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In Midland, a struggling burg with a half-vacant downtown, signs at the tiny airport—which offers direct service to only five cities—announce plans for a 21st-century terminal with a glass front and wavy roof. Even ghost town-like Saginaw has a big sports arena. While planners have been thinking big, the small stuff has been neglected. During its big-ticket building spree, Detroit lost all of its major chain grocery stores, all but one of its first-run movie theaters, and all of its department stores (discount or otherwise).

The government-run Michigan Economic Development Corporation (MEDC) sits at the center of the mania for size and central planning. Since conservative darling governor John Engler created it in 1999, the MEDC has handed out $3.5 billion in subsidies to private business (almost all of them matched by additional local subsidies). *Site Selection* magazine, among others, persistently ranks the MEDC among the best such agencies in the country. It's likely, in fact, that Michigan gives out the biggest and most generous business subsidies of any state. In addition to the MEDC and its various grant programs, "Renaissance Zones," countywide enterprise zones with industry-targeted tax incentives, exist in all but the most sparsely populated Michigan counties. Direct MEDC grants—offered only when local governments also kick in with their own funds—offer another boost to favored industries. Since 1995, MEDC and its predecessors have given direct state aid to at least 49 major projects around the state, most of them manufacturing plants owned by big companies.

Plenty of the industries and projects Michigan favors seem quite likely to divert resources from other, more productive pursuits. For example, so-called "growth" industries—a list that somehow includes "automotive engineering"—get the most help even when they aren't necessarily growing. Although the state's only arguable strength lies in a growing health care sector, only targeted "life sciences" firms (mostly drug makers) get the biggest handouts. Likewise, Michigan offers America's most generous tax credits for film production, but doesn't have a single full-scale film school to train people for a business that requires enormous technical knowledge. For all the talk about a Great Lakes Hollywood, the credit has mostly brought in forgettable productions like *Buddy BeBop vs. the Living Dead*.

Granholm has presided over some of this system's worst excesses, but she didn't invent it. Jack McHugh, a senior analyst at the Mackinac Center in Midland (responsible for chronicling many of the state's central planning failures), told me that the fault lies with both parties over several decades. "The legislature is politically incapable of doing genuine business climate reform," he says. Economic development subsidies, he says, are "a cover story the legislature can use while ignoring the real dysfunctions and the sources of those dysfunctions," namely, unions and a dysfunctional political class in both parties.

In fact, it may be possible to go even further: The state's desire to plan growth and invest in big projects has made a bad situation worse. ♦

Abandoning the Most Vulnerable

Britain moves closer to legalizing assisted suicide.

BY WESLEY J. SMITH

On July 4, 1995, Myrna Lebov, age 52, committed suicide in her Manhattan apartment. The case generated national headlines when her husband, George Delury, announced that he had assisted Lebov's suicide at her request because she was suffering the debilitations of progressive multiple sclerosis.

Delury became an instant celebrity. He was acclaimed as a dedicated husband willing to risk jail to help his beloved wife achieve her desired end. The assisted-suicide movement set up a defense fund and renewed calls for legalization. Delury made numerous television appearances and was invited to speak to a convention of the American Psychiatric Association. He signed a deal for a book, later published under the title *But What If She Wants to Die?* Delury soon copped a plea to attempted manslaughter and served a few months in jail.

Had Delury acted in England or Wales today—rather than in New York in 1995—he almost surely would not have been prosecuted. Even though assisted suicide remains a crime in the U.K., newly published British guidelines have effectively decriminalized some categories of assisted suicide by instructing local prosecutors when bringing charges in such deaths is to be deemed "not in the public interest."

The guidelines were developed in response to a ruling by the U.K.'s highest court. A woman named Debbie Purdy—who like Lebov has progressive multiple sclerosis—plans to kill herself in one of Switzerland's suicide clinics if her suffering becomes too much to bear. Wanting to be accompanied by her husband, but fearful he could be prosecuted, she sued, demanding to be told by law enforcement ahead of time whether he would face charges.

Purdy won the day. Noting that other recent cases of "suicide tourism" (as such trips taken to Switzerland

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to die are called) had not been prosecuted, Britain's Law Lords ordered the head prosecutor to define the facts and circumstances under which the law would—and would not—be enforced.

The resulting guidelines declared that assisted suicides of people with a "terminal illness," a "severe and incurable disability," or "a severe degenerative physical condition"—whether occurring overseas or at home—should not be prosecuted if the assister was a close friend or relative of the deceased, was motivated by compassion, and the victim "had a clear, settled, and informed wish to commit suicide," among other criteria—exactly the circumstances Delury said motivated him to facilitate Lebov's death.

What do these guidelines teach us about assisted suicide? First, "death with dignity" is not just about terminal illness: It is about fear of disability and debilitation. A husband assisting the suicide of his wife, who wanted to die because their son became a quadriplegic, would be prosecuted under the guidelines, but he wouldn't face charges for assisting the suicide of the son.

Second, the guidelines prove that assisted suicide is not a medical act. Nothing in them requires a physician's review or participation.

Third, the court ruling and guidelines illustrate how the rule of law is crumbling. What matters most today is not principle, but emotion-driven personal narrative.

Perhaps most alarmingly, decriminalizing assisted suicide in these cases sends the insidious societal message that the lives of the dying and disabled are not as worthy of protecting as those of others. In this sense, the guidelines are an abandonment of society's most vulnerable citizens, exposing at least some to the acute danger of being coerced into death by relatives or friends.

For proof, we need only turn again to George Delury. Here, as the late Paul Harvey used to say, is the rest of the story.

Delury made a crucial mistake that changed his favorable public perception. Perhaps because he was planning to write a book, he kept a computer diary of the events leading up to Lebov's death—and its content shattered any pretense that he was motivated by love or compassion. To the contrary, George Delury put Myrna Lebov out of *his* misery.

The diary showed that Lebov did not have an unwavering and long-stated desire to die, as Delury had claimed. Rather, as often happens with people struggling with debilitating illnesses, her mood waxed and waned. One day she would be suicidal—but the next day she was engaged in life. Delury, moreover, encouraged his wife to kill herself, or as he put it, "to decide to quit." He researched her antidepressant medication to see if it could kill her, and when she took less than the prescribed amount, which in itself could cause depression, he stashed the surplus until he had enough for a poisonous brew.

That wasn't all. He worked assiduously at destroying Lebov's will to live by making her feel worthless and a burden. On March 28, 1995, Delury wrote in his diary that he planned to tell his wife:

> I have work to do, people to see, places to travel. But no one asks about my needs. I have fallen prey to the tyranny of a victim. You are sucking my life out of my [sic] like a vampire and nobody cares. In fact, it would appear that I am about to be cast in the role of villain because I no longer believe in you.

Delury later admitted on the NBC program *Dateline* that he had shown his wife that very passage.

That Delury wanted Lebov to kill herself is beyond dispute. On May 1 he wrote:

> Sheer hell. Myrna is more or less euphoric. She spoke of writing a book today. [Lebov was a published author, having written *Not Just a Secretary* in 1984.] She's interested in everything, wants everything explained, and believes that every bit of bad news has some way out. . . . It's all too much.

On June 10, Delury's diary described an argument with Lebov that started when she left a message to her niece that "things are looking splendid":

> I blew up! Shouting into the phone that everything was just the same, it was simply Myrna feeling different. I told Myrna that she had hurt me very badly, not my feelings, but physically and emotionally. "Now what will Beverly [Lebov's sister] think? That I'm lying about how tough things are here." I put it to Myrna bluntly—"If you won't take care of me, I won't take care of you."

On July 3, 1995, the day before Myrna's death, Delury wrote:

> Myrna is now questioning the efficacy of solution, a sure sign that she will not take [the overdose] tonight and doesn't want to. So, confusion and hesitation strike again. If she changes her mind tonight and does decide to go ahead, I will be surprised.

Finally, on July 4, Delury got what he wanted: Lebov swallowed the overdose of antidepressant medicine that her husband prepared for her and died.

Once the contents of his diary were publicly revealed, though, Delury's defense of "compassion" became inoperative, which is why he accepted the plea bargain.

That still wasn't the end of the story. In *But What If She Wants to Die?*—published after double jeopardy prevented another prosecution—Delury wrote that he hadn't just mixed Lebov's drugs, but also smothered her with a plastic bag because he was worried that the amount she ingested might not be sufficient to kill her. Thus, Myrna Lebov didn't really die by suicide: She was killed by her husband. (Delury died by his own hand in 2007, at the age of 74.)

Thanks to the assisted suicide guidelines, potential Myrna Lebovs in Britain are now at the mercy of future George Delurys. And those Delurys know full well that, so long as they don't keep inculpating diaries, they will have little trouble convincing prosecutors that their motive was compassion, a claim readily believed in a society so fearful and disdainful of disability. Such are the consequences of the state prosecutor's decision that protecting the dying and infirm from assisted suicide is no longer in the public interest. ♦

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The New Tammany Hall

Public sector unions have become a labor aristocracy—and they are bankrupting states and municipalities.

By Fred Siegel & Dan DiSalvo

Ever since the 1972 Democratic convention nominated George McGovern over the objections of the AFL-CIO, the standard wisdom has been that organized labor's power in American politics has declined dramatically. The failure of the current Democrat-dominated Congress to pass labor's highest legislative priority, the Employee Free Choice Act ("card check"), is taken as indicative of unions' political incapacity. But the picture looks very different on the state and local level where public sector employee unions have gone from one victory to another. Indeed, they are the one group, besides Goldman Sachs executives, that's done well during the current Great Recession. Public sector unions have become political powerhouses in New York, New Jersey, Washington, California, and a host of other states. They have become so powerful as to threaten the Madisonian system set up to constrain any one faction from overwhelming the public interest.

Once upon a time public sector workers received less pay than their private sector counterparts in return for better benefits and greater job security. But that bargain has been breached. Public sector wages have more than caught up, while the differential between public and private sector benefits has increased so much that public sector work, particularly for the unskilled, is greatly coveted. To protect such benefits, the unions have tenaciously opposed Senator Max Baucus's plan to tax expensive health insurance plans to finance an extension of coverage. Supporters of public sector union power have developed a rationale for the government employees' gold-plated perks. The argument is that public employees are the vanguard of the working class. As such, the benefits they achieve will eventually have to be matched by private sector employers. As Carla Katz, the leader of New Jersey's Communications Workers of America, explained to Paul Mulshine of the *Newark Star-Ledger*, reformers embrace "the progressive theory that unless you create a substantial wage and benefits package that reflects good jobs and the ability to have a middle-class life style, there will be a perpetual race to the bottom."

Katz not only represents thousands of state employees, she is also the richly rewarded former girlfriend of New Jersey governor Jon Corzine. Katz's influence on Corzine became clear in 2006 when the impassioned governor spoke to a Trenton rally of roughly 10,000 public workers and shouted out: "We will fight for a fair contract." Corzine was of course management in that situation, not labor. But with the power of the public sector unions to drive election outcomes, they now sit on both sides of the bargaining table. Unlike private sector unions, the sheer number of workers represented is not the linchpin of their influence. Private sector unions have a natural adversary in the owners of the companies with whom they negotiate. But public sector unions have no such natural counterweight. They are a classic case of "client politics," where an interest group's concentrated efforts to secure rewards impose diffused costs on the mass of unorganized taxpayers. Also unlike private sector unions, those in the public sector can achieve influence on both sides of the bargaining table by making campaign contributions and organizing get-out-the-vote drives to elect politicians who then control the negotiations over their pay, benefits, and work rules. The result is a nefarious cycle: Politicians agree to generous government worker contracts; those workers then pay higher union dues a portion of which are funneled back into those same politicians' campaign war chests. It is a cycle that has driven California and New York to the edge of bankruptcy.

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Consider what happened in Washington State. After helping Democrats win full control of the legislature in 2002, the state affiliate of the Association of Federal, State, County, and Municipal Employees (AFSCME) and other unions persuaded lawmakers to lift the collective bargaining restrictions. Within three years the number of union members had doubled. With more state employees paying dues, the amount of union dollars flowing into the coffers of Democrats running in state elections also doubled. A prime beneficiary of such union generosity was Christine Gregoire, who became governor in 2004 after one of the closest elections in the state's history. (AFSCME gave $250,000 to the state Democratic party to help pay for the recount that handed her the election by 129 votes). Once in office, Gregoire negotiated contracts with the unions that resulted in double-digit salary increases, some exceeding 25 percent, for thousands of state employees. In 2007, J. Vander Stoep, an adviser to Republican Dino Rossi, Gregoire's 2004 opponent, prophetically remarked that the unions' arrangement with the Democrats was "a perfect machine to generate millions of dollars for her reelection. . . . They are building something that conceivably can never be undone—at taxpayer expense." In their 2008 rematch, Rossi lost again to Gregoire, this time by 194,614 votes.

Public sector unions with political influence can negotiate detailed work rules in which they largely exempt themselves from accountability in return for providing political support for their nominal managers. In New York City, Mayor Michael Bloomberg and the United Federation of Teachers (UFT) have created a cartel to advance their own interests at the expense of the citizens and students. The teacher's contract is over 200 pages of small print. Reminiscent of the 12,000 United Auto Workers (UAW) who were paid not to work in the heyday of the UAW, nearly 800 Gotham "rubber room" teachers who have problems on the job are being paid not to work. The UFT has also negotiated with Bloomberg, mistakenly called an education reformer, a reduction in the number of days they must work to prepare for classes before school begins in September at the same time as their salary increases have been running at better than twice the rate of inflation.

But the teachers are not the only politically powerful labor force in New York, the nation's most-unionized state where 69 percent of public sector workers belong to collective bargaining units. In the nominally private health care sector, employees depend heavily on government programs, principally Medicare and Medicaid, for their livelihood. In the 1970s and 1980s, the local 1199 Drug, Hospital and Health Care Employees Union

In New York City, where public sector union benefits have grown twice as fast as those in the private sector since 2000, firefighters may retire after 20 years at half pay. Pension benefits for a new retiree averaged just under $73,000.

THOMAS FLUHARTY

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New York law mandates that legislation be evaluated for its fiscal impact. In recent years those calculations were performed by an actuary whose union clients included teachers, firefighters, police, and correction officers.

fought a running battle with New York's largely state and federally funded voluntary hospitals. Under the brilliant leadership of Dennis Rivera, 1199 built a top-notch political operation, and with the hospitals, which were barred from political activity, formed a partnership to maximize the flow of government revenue. The union-hospital alliance has been so successful in aligning itself with politicians, Democrat and Republican alike, that not only has 1199 been largely untouched by the downturn, but New York spends as much on Medicaid as California and Texas combined. And come boom or bust, hospital and health care employment in the state keeps growing. Rivera, who merged his local with the SEIU (Service Employees International Union), has now brought his political acumen to Washington as the SEIU's point-man on health care reform.

The combined power of the teachers and health care workers has made the New York state legislature a wholly owned subsidiary of the public sector unions. The law mandates that all new legislation be evaluated for its fiscal impact. In recent years those calculations were performed by an actuary named Jonathan Schwartz. In 2008, when Schwartz found that a piece of bipartisan legislation allowing city workers to retire early with full pension benefits would impose no new costs, the *New York Times* blew the whistle. Schwartz, who had been fired from a city job, worked not only for the state assembly but also, it turned out, for District Council 37 of the SEIU. When asked which other unions he had worked for, he replied, "How many unions are there?" His client list included the teachers, firefighters, detectives, correction officers, and bridge and tunnel officers. Not surprisingly New York State has the highest per-employee pension costs in the country.

Prior to World War II, a New York State Supreme Court justice neatly summarized the prevailing attitude toward public sector unions: "To tolerate or recognize any combination of Civil Service employees of the government as a labor organization or union is not only incompatible with the spirit of democracy but inconsistent with the spirit of democracy and inconsistent with every principle upon which our Government is founded." Laws permitting collective bargaining for public employees were virtually nonexistent. Even labor-friendly economists thought organizing most public sector employees was illegitimate. AFL-CIO president George Meany believed it was "impossible to bargain collectively with the government."

What produced the enormous expansion of public sector unions? In a case of unintended consequences,

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government unionism ironically developed from actions taken by those hostile to it. Many of the icons of the labor-left like New York's great mayor Fiorello LaGuardia and President Franklin Roosevelt were adamantly opposed to public sector unions. LaGuardia, who pledged to make New York a "one hundred percent [private sector] union" town, had a civic vision of public employees as the people's workers, exemplars of the common good. Famed for dropping in unexpectedly on city offices and dressing down slackers, LaGuardia explained that he did "not want any of the pinochle club atmosphere to take hold" in his city government. "The right to strike against the government," he insisted, "is not and cannot be recognized."

In 1935, Roosevelt signed the Wagner Act, the first peacetime effort to support the growth of private sector unions. Its aim in the words of its sponsor, New York senator Robert Wagner, was "encouraging the practice and procedure of collective bargaining." But like his close ally LaGuardia, Roosevelt drew a definite line when it came to government workers. "Meticulous attention," the president insisted, "should be paid to the special relations and obligations of public servants to the public itself and to the Government. . . . The process of collective bargaining, as usually understood, cannot be transplanted into the public service." Both men feared that liberalism would be compromised by the unavoidably self-serving nature of public sector unionism.

But the mayor and the president opened the door to just what they opposed. In the bad old days of Tammany Hall, which had fought both LaGuardia and Roosevelt, the average tenure of a cop or teacher or garbage collector was five years. But with the rise of civil service reform backed by both men in the 1930s, public employees both in New York and the federal government began to gain lifetime security. Civil service reform, it turned out, was the precondition for unionization because it gave workers a long-term interest in their jobs and facilitated their capacity to express collective concerns. In 1958, New York mayor Robert Wagner, son of the senator behind the 1935 federal act, issued an executive order generally known as "the little Wagner Act." It gave city employees bargaining rights and provided their unions with exclusive representation. The city was soon turning over the dues from its workers to the union. Those dues soon provided political action funds to support union-backed candidates.

Running for reelection in 1961, Wagner faced a Democratic party revolt. The party's five borough chiefs were supporting his opponent, and Wagner made the unions the basis of his winning campaign. It was a turning point. Looking back in the wake of New York's mid-1970s fiscal crisis, Alex Rose, the head of the once powerful (and now defunct) New York Liberal party and a former labor leader, concluded that "the little Wagner Act" had proven a dreadful "mistake." Rose, who had also led the private sector clothing workers, explained that public sector "workers are not extracting a share of the profits but rather a share of taxes." Ultimately, he noted, his workers would be among those "footing the bill."

Ten weeks after Wagner's victory, President John F. Kennedy, who had been elected by the narrowest of margins in 1960, decided to mobilize public sector workers as a new source of political support. In mid-January 1962, he issued Executive Order 10988 giving federal workers the right to organize, though not to collectively bargain. Kennedy's action and Wagner's victory set off a wave of local union activity across the nation's major cities.

In states with laws favorable to unionism, public sector organizing has flourished; in states without such laws, it has not. If there is a specific point from which to mark the beginning of the current looming fiscal crisis in many blue states, it would be the wave of local strikes by public employees that were set in motion by Kennedy's executive order. His strategy succeeded beyond his wildest expectations. Like entitlement programs, the expansion of public sector unionism produced a self-generating dynamic for continual expansion. Public sector unions would occasionally experience temporary setbacks—as in the New York fiscal crisis of 1975—but they had the political clout to claw back any concessions made under duress.

During the Reagan years, the growth in local and state jobs was double the rate of population growth. In the downturn of the early 1990s, the *New York Times* warned that the states faced a "fiscal calamity." In 2002, during the next serious downturn, the National Governors Association insisted that the "states face the most dire fiscal situation since World War II." But in each case the growth of government and public sector pay packages merely stalled. It resumed as soon as the economy recovered.

There is broad agreement among economists that public sector unions' political power increases government spending. As reported in the *New York Times*, public-sector wages and benefits over the past decade have grown twice as fast as those in the average private-sector. An Empire Center for New York State Policy study found that in 2006 state and local government employees in New York were paid higher average salaries in eight out of ten regions of the state. If one excludes jobs in finance in New York City and the

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Southern Tier, private sector employees earned slightly less than government ones statewide.

The downturn has been very tough on private sector workers. But the public sector, particularly when it comes to pensions for uniformed workers, has been a different matter. In New York City, where public sector union benefits have grown twice as fast as those in the private sector since 2000, firefighters may retire after 20 years at half pay. Pension benefits for a new retiree averaged just under $73,000 (all exempt from state and local taxes). Many also collect an annual $12,000 "Christmas bonus." To top it off, they receive a health insurance policy that is worth about $10,000 annually. New York City is also paying benefits to 10,000 retired police officers under 50 years of age.

Such cases abound. According to the *Boston Globe*, 225 of the 2,338 Massachusetts state police officers made more than Governor Deval Patrick's $140,535 annual salary in 2006. Four state troopers received more than $200,000, and 123 others were paid more than $150,000. The *Chicago Sun-Times* reports that in suburban Chicago, there are school administrators—a unionized profession—who are making over $400,000. California teachers are represented by one of the country's most powerful teachers' unions and earn 25 percent more than the national average. *Forbes* has reported that there are California prison guards making $300,000 a year.

While the wage parity between public and private sector workers is largely unchanged since 2002, public sector benefits are a different matter. For every $1-an-hour pay increase, noted Dennis Cauchon in *USA Today*, public employees have gotten $1.17 in new benefits. Private workers have gotten just .58 cents in benefits for every $1 raise. This gap worries left-liberal labor economist Barry Bluestone. The price of state and local public services increased by 41 percent nationally between 2000 and 2008. Private services only increased by 27 percent. The benefit growth has continued unabated into the Great Recession, and Bluestone says the gap will inevitably produce a backlash.

Like banks, but with even less self-control, state governments make long-term promises in boom times while depending on the short-term flow of revenues. But when the boom ends, the benefits that have been ratcheted up have to be paid for out of a declining private sector economy. Barring a sharp recovery, state and local government tax-funded pension contributions in New York are likely to triple over the next five years in order to pay out the pension benefits guaranteed by the state constitution. (This is equally true in Illinois.) California's public pension fund liability has already topped $200 billion, and in cities such as Oakland, Vallejo, and Rio Vista bankruptcy looms.

In the states and cities where government workers' unions are strong, they have formed alliances with nonprofit advocacy groups such as ACORN and foundations committed to greater government involvement in the economy and society. The Manhattan Institute's Steven Malanga argues that this constellation of forces is in effect a new Tammany Hall. It is, says Seymour Lachman, a former New York state senator who now heads a center for government reform at Wagner College, "the ward heeler system of Boss Tweed's Tammany Hall wrapped in some kind of progressive disguise." The old Tammany, however, was subject to electoral defeats. The new Tammanies have proved self-perpetuating. In California, Governor Schwarzenegger's ill-organized effort to roll back public sector union power in 2005 led to the muscleman's first defeat, then his political evisceration, and now the Golden State's fiscal humiliation. New York City and State are on a similar course. Across the country the new political machine has mostly been aligned with the Democratic party. Some individual unions, however, such as California's prison guards and New York's hospital workers, have been protected and advanced by Republicans. Still others play a pragmatic balance-of-power game, forging short-lived marriages of convenience with either political party.

Public sector unions are beginning to strike out on their own, too. If the recent primary elections in New York are any indication, it is only a matter of time before, using the vehicle of the Working Families party (WFP), they take control of New York City government. New York allows third parties on the ballot, and the Working Families party—organized in 1998 as an alliance between labor unions and ACORN—cross-endorses allies in the Democratic party. Yet the WFP is thriving while New York's Democrats atrophy. In last week's New York City primaries, WFP candidates for city council won easily, as did the party's candidates for the city's second and third highest offices: comptroller and public advocate. Those are the best platforms from which to make a run for mayor of New York City when Bloomberg finally gives up his throne.

Public sector unions bring to the fore what James Madison called "the violence of faction" and its threat to the "permanent and aggregate interests of the community." This can't be blamed on the unions; they're advancing their members' interests. The fault lies with politicians, particularly those governors and mayors who have been willing to sabotage the public interest to smooth the path to their own reelections. In the absence of tough-minded reform leaders who will take on the public sector unions, the fiscal future of states and localities is bleak. ♦

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Don't Change 'Don't Ask, Don't Tell'

There are sound reasons—unbigoted ones—for our policy on gays in the military.

By James Bowman

Reporting on the prospective dismissal from the Air Force of a decorated combat veteran, Lieutenant Colonel Victor Fehrenbach, because he had been identified by somebody else as gay, the *Washington Post* recently wrote:

> After investigating, the Air Force charged him last September with damaging its good order and discipline. The "don't ask, don't tell" law, passed by Congress in 1993, prohibits gay, lesbian, and bisexual individuals from serving openly in the U.S. armed forces.

This is a common mistake. Actually, there is no "Don't ask, don't tell" law. The law passed by Congress in 1993 (USC Section 654, Title 10) says, "The presence in the armed forces of persons who demonstrate a propensity or intent to engage in homosexual acts would create an unacceptable risk to the high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability."

"Don't ask, don't tell" is of course the name given to the executive order by Bill Clinton which was designed at once to implement and to circumvent this law. That is presumably why, as the *Post* notes, President Obama thinks any change "should be done legislatively," since an executive order from him allowing homosexuals equal status in the military would be in defiance of the law as written by Congress. Prospects for such legislation are increasing. Senate Majority Leader Harry Reid has asked the president and Secretary of Defense Robert Gates to "bring to Congress your recommendations" for changing "Don't ask, don't tell." There is a legislative effort in the House, HR 1283, that is likely to come up for debate in the coming weeks, though it is doubtful, to say the least, whether "debate" is the right word. The Joint Chiefs of Staff have just published an essay in their quarterly journal (winner of the "2009 Secretary of Defense National Security Essay Competition") that explicitly compares the end of "Don't, ask, don't tell" to the civil-rights struggle to racially integrate the armed forces. And what debate can there be between right and wrong?

"Don't ask, don't tell" is a tribute to our national talent for hypocrisy. Yes, President Clinton was prepared to agree, homosexual acts might be a risk to the high standards of morale, good order, discipline, and unit cohesion, but if nobody knew about them, then what harm could they do? Since then, nobody has thought up a better way of coping with this thorny problem. The left has nothing better to offer than riding roughshod over the opinions of the majority of servicemen—58 percent in the latest *Military Times* poll—and repealing the law. The same poll found that 10 percent of respondents would leave the service if gays were allowed openly to serve and another 14 percent would consider leaving. We have at least to take seriously the possibility that this would be the price of treating military service as a human right.

This it clearly cannot be. There are all kinds of people—the very young and the very old, the sick or disabled, violent criminals or, in combat roles, women—whom we regard as unfit to be soldiers. The fact that open homosexuals are also excluded cannot by itself be considered an injustice. The mere assumption that it is may be related to the fact that the advocates of integrating gay soldiers, sailors, airmen, and Marines into the armed forces so often speak, mistakenly, about the "repeal" of the "Don't ask, don't tell" policy—as if, like waterboarding, it were a simple matter of presidential will to discontinue a practice that the "rights" lobby finds abhorrent. It's an assumption that often seems to go with the moralized politics of the Age of Obama.

The moralization owes something to President Obama's style of oratory, which has a regrettable tendency towards happy-talk. Thus he tells us that we don't have to choose

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between our ideals and our security, or between jobs and the environment, or between universal health care and a manageable deficit. These are supposedly "false choices." A big part of this new moralism has to do with the easy assumptions of the popular and media cultures that a whole range of issues, from gay marriage to global warming to Guantánamo, are morally perspicuous and that those on the wrong side of them must be supposed for that reason alone to be corrupt or bigoted. Apparently, when you sign on to the "progressive" agenda, you get a whole outfit of moral certainties that would make the allegedly simplistic George W. Bush green with envy.

Such certainty seems to be infectious, too. As Sam Schulman wrote in these pages a few months ago,

> There is a new consensus on gay marriage: not on whether it should be legalized but about the motives of those of us who oppose it. All agree that any and all opposition to gay marriage is explained either by biblical literalism or anti-homosexual bigotry. This consensus is brilliantly constructed to be so unflattering to those of us who will vote against gay marriage—if we are allowed to do so—that even biblical literalists and bigots are scrambling out of the trenches and throwing down their weapons.

Recent opinion polls show that this is even more true of the opposition to "Don't ask, don't tell," which now seems to claim majorities among Republicans and regular churchgoers, for example, if not among servicemen and women themselves. I suspect these liberalizers have been persuaded that there really is no argument to be made on the other side, which is also what allows the rhetorical shock troops of the left to apply the discrediting word "bigotry" to those who are not so persuaded. This is the way our national conversation takes place now. Instead of serious problems on which men and women of goodwill may differ, all that remains on issue after issue, from global warming to gay marriage to health care, is a crude moral melodrama pitting enlightened and civilized adherents of the media consensus against bigots and reactionaries.

Once so identified, one is presumed in advance to have no rational case to make but only a knee-jerk reaction against "change"—that quality which, divorced from any substance, took on mystical properties during the late presidential campaign. We have the president's own word, at least, that the change he intended included allowing gay servicemen to serve openly, even where once this was thought to be prejudicial to "good order and discipline." Maybe good order and discipline are themselves now to be thought the concerns only of "bigots."

Yet if reason were to be readmitted to the debate, we might find something in the history of military honor to justify the principle now enshrined in the law decreeing that "homosexuality is incompatible with military service." We know that soldiering—I mean not training or support or peacekeeping or any of the myriad other things soldiers do, but facing enemy bullets—is inextricably bound up with ideas of masculinity. We also know that most heterosexual males' ideas of masculinity are inextricably bound up with what we now call sexual orientation. In other words, "being a man" typically *does* mean for soldiers both being brave, stoic, etc.—and being heterosexual. Another way to put this is to say that honor, which is by the testimony of soldiers throughout the ages of the essence of military service, includes the honor of being known for heterosexuality, and that, for most heterosexual males, shame attends a reputation as much for homosexuality as for weakness or cowardice.

This is not, of course, to say that homosexuals are weak or cowardly—only that the reputation of manliness, which we know to be an important component of military honor, is in practice incompatible with the imputation either of homosexuality or of weakness and cowardice. Now presumably an argument for the armed forces' being required to accept gay recruits is that it doesn't *have* to mean this, and that this simple reality is merely the product of custom and convention and no essential part of the moral and emotional equipment of men capable of nerving themselves to face combat. Possibly they are right. But what if they are wrong? Is there any way to find out without taking a real risk with national security? Are the advocates of gays in the military prepared to say, *fiat justitia, ruat caelum*? And if so, do the rest of us, the majority of gays and straights alike who would prefer not to take such a risk with our lives, property, and freedom, have any say in the matter? Or are the wishes of this minority of a minority to be paramount? They say they demand the "right" to make the supreme sacrifice for their country, and yet they are unwilling to make the presumably lesser sacrifice of being publicly reticent about their sexual behavior—or the sacrifice of not being in the military. It doesn't add up, somehow.

In fact, we do not know and we cannot know what our armed forces would be like under such conditions. The advocates of allowing open homosexuals to serve often cite the example of Israel or Britain, both of which have integrated homosexuals into their military services apparently without incident. But they have done so in circumstances which do not allow for any objective assessment of the success or failure of the experiment. In Israel, all citizens must perform military service, which presumably affords much more scope for diluting the impact, if any, of the presence of homosexuals than would be the case in an all-volunteer army like that in the United States. In Britain, the change came

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about in response to an order from the European Court of Human Rights, whose decrees have the force of law. For this reason, it would not be in the interest of any officer who valued his career prospects to remark upon any problems that the presence of gay soldiers, sailors, or airmen might be causing in their armed forces. Nor has the performance of the British Army in Iraq or the Royal Navy in the Persian Gulf been such as to render all suspicion of damage to morale, good order, and discipline ridiculous.

Yes Churchill, as first lord of the Admiralty, once spoke of the traditions of the Navy as being "rum, bum and the lash." And we do know that there have always been gays in the military—and that, therefore, they have been tolerated on the condition that they have been able to behave with discretion. This is not necessarily an argument for "Don't ask, don't tell," which is an attempt to make official what would be unofficial in any case. But if it is no longer possible to rely on the discretion, the decency, and tolerance of the individual soldier, then how much longer can we expect to rely on his courage and readiness to sacrifice himself for the greater good?

In *Saving Private Ryan*, when the word finally reaches the eponymous hero that his brothers have all been killed and that he is being withdrawn from his forward position as a precaution against his being killed likewise and so leaving his parents childless, his reply is to take in his combat buddies with a sweeping gesture and say: "*These* are my brothers." It is a way of looking at the experience of men in combat that is so familiar as to be almost a cliché. It echoes the words of Shakespeare's Henry V before the Battle of Agincourt:

> We few, we happy few, we band of brothers,
> For he today that sheds his blood with me
> Shall be my brother. Be he ne'er so vile
> This day shall gentle his condition.

In order for any military unit to function under extreme conditions, this sense of brotherhood, which is naturally fostered by shared hardships, will always be encouraged by the military culture for the sake of the unit's combat effectiveness.

Nor is the notion of brotherhood merely metaphorical. There is a kind of brotherhood of comrades in arms that should be seen, because it is so often seen by the men themselves, as a species of brotherhood of the blood. Certainly it involves a form of love—in Greek *philia*—whose strength is essential to the purposes which evoke it. It is striking how seldom this love between men in battle is mentioned by the advocates of lifting the ban on open homosexuals' serving in the armed forces. Characteristically, they argue on the basis of professionalism and the supposed irrelevance of "sexual orientation" to the job of soldiering. But is it irrelevant?

Perhaps even critics of "Don't ask, don't tell" have an uneasy sense that they cannot simultaneously say—as much of the commentary about the film *Brokeback Mountain* seemed to suggest—that the homosexual relationship is simply friendship carried to a higher power and, as the advocates for gay marriage imply, that it is exactly the same as the erotic love between men and women. Those who are not homosexuals have always resisted any simple equivalence between sexual love and friendship, not out of bigotry but at least partly because to grant it would be an abdication of their own right to love. Characteristically, the robust heterosexual, if told that close friendship with another man is only a degree away from homosexual relations with him, will back off the friendship. He knows, or believes, what it seems the homosexual cannot know or believe, or doesn't want to know or believe, namely that the two sorts of love are different in kind and not just in degree.

The resistance from military men to the idea of gays in the military seems to be due to this perception. In their minds there simply is no continuity between brotherly and erotic love. Indeed, the power of the former would be not just diminished but destroyed by any confusion of the two. When that other kind of love, *eros*, gets mixed up with the very different kind of love appropriate to siblings or parents and children, we call the result incest, which has been banned, often with extreme prejudice, in almost all cultures known to us. This is because *eros* is so strong that it corrupts and destroys the other kinds of love which, accordingly, simply cannot coexist with it. *Eros* is the gray squirrel, the kudzu, the zebra mussel of emotions: When it moves into an environment, it crowds out all its competitors.

Of course it will now be said by our new breed of political moralizers that I have compared homosexual love to incest, thus identifying myself—assuming that I had not already done so—as a bigot. I have done no such thing. I have said that homosexual love, like heterosexual love, must admit of certain human relationships, based on other, nonsexual kinds of love, where its presence would corrupt and destroy those more delicate types of love. I merely ask those who wish to do away with the prohibition of open homosexuality in the armed services to consider that the more than 1,100 flag and general officers who recently declared their support for the existing law were motivated, as they claim, by genuine concern for national security and not by bigotry. Wouldn't any refusal to do so be tantamount to bigotry itself? ♦

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The Brandeis Effect

Close study leads to deep admiration for the justice

'Le juge formidable,' ca. 1920

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BY G. EDWARD WHITE

Melvin Urofsky's new biography of Justice Louis Dembitz Brandeis is the best one-volume life of Brandeis yet to appear. It far surpasses Alpheus Mason's *Brandeis: A Free Man's Life* (1946), and it is more comprehensive, though somewhat less acute, than Philippa Strum's *Louis D. Brandeis* (1984). It seems likely to be the starting place for information on Brandeis for a long time. Urofsky's previous research and writing on Brandeis had been competent and extensive, and this book is a fitting capstone.

G. Edward White, the David and Mary Harrison distinguished professor of law at the University of Virginia, is editor of the most recent edition of Oliver Wendell Holmes's The Common Law.

Yet Urofsky's book, for all its comprehensiveness, erudition, and abiding sympathy for his subject, just misses as a first-rate judicial biography. It neither fully captures Brandeis as a thinker nor sufficiently clarifies his body of judicial work. Stephen Baskerville's *Of Laws and Limitations* remains the best intellectual portrait of Brandeis, and the best treatment of his career on the Supreme Court lies in scattered places.

Louis D. Brandeis
A Life
by Melvin I. Urofsky
Pantheon, 976 pp., $40

"A great man," Justice Oliver Wendell Holmes once said of Chief Justice John Marshall, "represents a great ganglion in the nerves of society." Holmes was using "ganglion" in a cosmic sense. One could apply the term to Brandeis in a different way. He was the ganglion of a social and intellectual network. The time frame of the network stretched back from Brandeis, born in Louisville in 1856, to Johann Wolfgang von Goethe, whose *Faust* (1808) and *Poetry and Truth from My Own Life* (1811-1833) had been read and admired by both Brandeis's maternal grandmother and his mother, cultured Bohemian Jews from Prague. Brandeis regarded Goethe as his intellectual hero, and was still reading and quoting him in his eighties (he died at 85 in 1941).

The network stretched forward to six of Brandeis's many famous law clerks, Dean Acheson, Judge Henry Friendly, and the academics Louis

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Jaffe, Paul Freund, Willard Hurst, and David Riesman, the last survivor of whom died in 2002. Also included in the network were Holmes himself, born 15 years before Brandeis, and the ubiquitous Felix Frankfurter (born in 1882), who was nominated to fill Brandeis's seat on the Supreme Court in 1939. Holmes was Brandeis's most intimate friend on the Court—the two served together from 1916 to 1931—and Frankfurter was Brandeis's most intimate professional friend outside the Court, as aptly illustrated by Urofsky's publication of conversations between Brandeis and Frankfurter over a 25-year period.

The ganglion metaphor is appropriate for Brandeis not just because he was the nucleus of a group of famous writers and lawyers. Unlike Goethe, or Holmes, or many of the lesser known persons just identified, Brandeis was primarily a doer, not a sophisticated thinker or gifted writer. His greatest influence came from his ability to shape public policy and influence the actions of others. To be sure, he wrote two books and numerous influential opinions. But he was, above all, a legal and judicial strategist.

These last comments should not be understood as implying that Brandeis was deficient in talent. On the contrary, one of the central themes of Brandeis's life and career is his remarkable intellectual and professional talents. By any standard, LDB was one of the most gifted lawyers and judges in American history.

Le juge formidable. Brandeis was born in the United States to a sophisticated and wealthy Jewish family, and nurtured in an ethnic enclave that stressed education, travel, and intellectual exchange between men and women. He first attended German-, then English-speaking public schools in Louisville, which had a critical mass of Bohemian Jews at a time (the 1870s) when anti-Semitism had not widely taken root in America. He received the highest possible grades in his schooling, was apparently never a disciplinary problem, and enjoyed an active physical life. He traveled widely within the United States during his childhood, then accompanied his family to Vienna in 1872 and stayed on to attend the Annen Realschule, a private German academy in Dresden from which he graduated in 1875 with comparatively high marks, considering that all his courses were in German, not the primary language of his Louisville childhood.

In the fall of 1875, Brandeis, at the age of 19, matriculated at Harvard Law School, having prepared for his legal studies by reading James Kent's four volume treatise, *Commentaries on American Law*. When he completed his course at Harvard in the late spring of 1877, he had accumulated the highest grade point average ever achieved by a law student at Harvard, a distinction he still held when he died in 1941. He was, however, technically not eligible to receive his degree in June 1877, or to be class orator at the graduation ceremony—despite being chosen as such by Dean C.C. Langdell and the rest of the Harvard faculty—because he had not met Harvard's requirement that students be at least 21 years old to receive degrees.

President Charles Eliot explained the decision to Brandeis: "The rule is that the orator is to be one who receives a degree. [University rules say] that you can't have a degree before you are 21. You will not be 21 until November. Commencement is in June. I don't see, Mr. Brandeis, how you can be the orator."

The Harvard law faculty, on the morning of graduation, responded to Eliot by giving Brandeis a special dispensation, which allowed him to graduate cum laude, the highest honors then available. Another student was named class orator.

Brandeis was regarded by his law school peers, straightforwardly, as a remarkably gifted and accomplished student with poise and charm. He was very likely the only person of Jewish ancestry in his class, but I have found no evidence that any of his law student contemporaries characterized him as "a Jew." Nonetheless, things were not all roses for Brandeis at Harvard. Never one to talk much about himself outside intimate circles, he declined to discuss, to the world at large, his financial and physical struggles in law school. Those involved health and money.

For the first time in his life Brandeis neglected regular physical exercise at Harvard, staring for long hours at casebooks, digests, and treatises. The first student-edited legal academic journal, the *Harvard Law Review*, would not come into existence until 1887, so in its place Brandeis threw himself into "moot court" competitions, which were staged through student clubs. The clubs, like Harvard College's social clubs, had a prestige hierarchy, and Brandeis was a member of the most elite of those clubs, the Pow Wow, sponsored by Dean Langdell.

He impressed faculty and students both with his analytical and forensic skills in moot court arguments and in the classroom, but he strained his eyes. He could not focus them properly for most of his final year as a student, and needed to have other students read to him as he prepared for his examinations. The problem was eventually diagnosed as nearsightedness, and it would clear up by the time Brandeis entered law practice.

Characteristically, Brandeis "learned a lesson" from the experience of straining his eyes, as he did from his second difficulty at Harvard, money. The lesson from eye strain was not to work overmuch, especially not for long periods at a time, and to rely on his remarkable ability to sift and synthesize information quickly. The lesson from being poor was a simple one: Support oneself.

At the time Brandeis entered Harvard Law School the family income had been dramatically reduced. The mercantile firm owned by his father, Adolph Brandeis, was affected by a significant downturn in the economy of the former Confederacy that took place after 1873, and Adolph, apparently always a bit of a plunger, compounded his difficulties by unfortunate investments in the cotton trade.

By 1875 Adolph Brandeis had sunk from being a prosperous merchant to being a bill collector, and LDB needed to borrow money from his older

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brother to get from Louisville to Cambridge, pay the $150 yearly tuition fee, and meet his room and board expenses. For a year he ate sparingly and studied hard, and at the end of the year was offered a scholarship. Instead, encouraged by Professor Charles Bradley, Brandeis became a tutor of undergraduate and law students, including Bradley's son. His income from tutoring was sufficient to keep him well afloat for his second year.

The lesson was plain: Make use of one's talents and live frugally, and one can not just survive but eventually thrive financially. Brandeis was to do both in spades in his 20-year career as a Boston lawyer, becoming a millionaire by the turn of the 20th century.

Getting an initial job with a firm was yet another struggle. After staying on at the Law School for a third year of graduate study, during which he received additional income from a proctorship at Harvard College, Brandeis resolved to go on the legal job market in 1878. He was persuaded by his sister and her husband, who lived in St. Louis, to open up a practice in that city.

After seven months he regretted the decision, and when his classmate Samuel Warren encouraged him to come back to Boston, Brandeis—after mulling matters over and gathering information, in what had become his characteristic approach to decision-making—decided to make the move. He first took a clerkship with Chief Justice Horace Gray of the Supreme Judicial Court of Massachusetts while waiting to be admitted to the Massachusetts bar. That came more quickly than usual: Brandeis started work for Gray at the beginning of July 1879 and on Gray's recommendation was admitted to the bar, without any examination, on July 29. He continued to work for Gray in the mornings and devoted the rest of his time to establishing the firm of Warren and Brandeis. By the spring of 1880 the firm was well launched.

Fast forward to June 1, 1916, when Brandeis's nomination to the Supreme Court was finally confirmed by the Senate. He had been nominated by Woodrow Wilson on January 28. Unlike most Supreme Court nominations at the time, that of Brandeis resembled a controversial, 21st-century nomination. His opponents, who were mainly outside the Senate, attacked him on a variety of grounds, including professional ethics. Former President William Howard Taft characterized Brandeis as "a muckraker, an emotionalist for his own purposes, a socialist, prompted by jealousy, a hypocrite, a man who is . . . utterly unscrupulous [and] of infinite cunning . . . of great tenacity of purpose, and, in my judgment, much power for evil." Taft himself would be appointed chief justice of the United States five years later and would serve with Brandeis for nine years. He never revised his opinion of Brandeis.

Taft's comments have often been held up as an example of the anti-Semitic dimensions of opposition to Brandeis's nomination, but in many respects they were accurate. Brandeis *was* a muckraker. He had been one of the gentlemanly reformers of late 19th-century Boston who sought to expose and attack corruption in municipal government. He was an impressive advocate, capable of drawing on emotional as well as intellectual arguments. He favored the sort of increased governmental regulation endorsed by early 20th-century Progressives, a posture he shared with Wilson. He could be cunning and devious in his strategies.

The Supreme Court visits the White House, ca. 1931 (Brandeis third from right).

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The characterizations of "socialist" and "prompted by jealousy" were exaggerations, and "utterly unscrupulous" and having "much power for evil" said more about Taft than LDB. But even the term "hypocrite" was not mere diatribe. Brandeis's nomination provoked bitter hostility from some of those who knew him well because they were fearful of his potential agendas once on the Court, and his skill in pursuing those agendas. They were right to be fearful. For persons like Taft—intelligent, passionate public figures who understood judging and politics well—LDB was their worst nightmare as a Supreme Court justice.

Brandeis's confirmation was far rockier than that of Sonia Sotomayor. It dragged on from February 1916, when a subcommittee of the Judiciary Committee began hearings, through May, when the Judiciary Committee, which had a Democratic majority, approved the nomination 10-8. The final vote in the Senate was 47-22, with three Republicans voting for Brandeis and one Democrat against him. After the ordeal was over, Wilson said, "I never

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signed any [judicial] commission with such satisfaction."

Brandeis, who had been an intimate adviser to Wilson, was the first Jewish nominee to the Court in the early 20th century. Beginning in the 1890s an influx of Jewish immigrants from southern and eastern Europe had resulted in a wave of anti-Semitic nativism in the northeast, where most of the nation's largest and most influential cities were then located. Brandeis's ethnic heritage became visible in a way it had not been in the 1870s, and there were some ugly anti-Semitic protests over his nomination. But his confirmation was uncharacteristically difficult, for the time, primarily because his opponents saw him as a formidable lawyer whom they expected to be an even more formidable judge.

The job of a Supreme Court justice, from the time Brandeis joined the Court to the present, has consisted of four primary tasks. The first and most important is to decide cases in a collective setting. The second, very closely connected to but separable from the first, is to craft justifications for decisions. That task does not simply devolve on the justices who are assigned to write opinions of the Court. It occurs in several stages of the process: when the Court decides to hear a case; when the case is discussed in conference; when a justice decides whether to join the majority disposition of the case or not; when a justice decides whether to write an opinion in the case or not. Many of the crafting stages are not visible to the public. All, however, are demanding and important.

The third primary task of the job is to interact with one's colleagues. Holmes once said that the justices on the Court were like nine scorpions in a bottle. Earl Warren believed that the job could be a living hell. Both were referring to the fact that the Court is a collegial body, so that an individual justice's arguments and votes and opinions must take his or her colleagues into account.

Some justices, such as Charles Whittaker, have found themselves unable to deal with the strain of constantly having to justify one's decisions and views to one's (usually) talented colleagues. Others, such as William O. Douglas, have found being constantly collegial such a strain that they rebelled against the conventions of collegial interaction. Douglas deliberately left Washington in mid-June for the remote hamlet of Goose Prairie, Washington, whether or not the Court had concluded its session. Several times in his career the Court had emergency summer hearings. Douglas never returned for them. He just couldn't stand having to be so collegial for so much of the year.

The last primary task is to make effective use of one's clerks. Congress had appropriated funds to pay a clerk for each justice in 1886, and Brandeis immediately followed the selection practice initiated by Holmes, that of having a member of the Harvard law faculty select his clerk each year. Frankfurter, who had joined that faculty in 1913 and begun picking Holmes's clerks two years later, was only too happy to pick those of Brandeis as well, and continued to do so until Brandeis retired.

Brandeis was, in short, a result-oriented, agenda-driven judge of a very sophisticated kind. He mastered all of the primary tasks of his job. At the same time he kept a close eye on politics.

Frankfurter and Brandeis had first met in Washington in the years before World War I, and the two men, born 26 years apart, became very close friends. Throughout his multifaceted career, Frankfurter combined being a consummate elitist with having a strong interest in social networks. The Harvard graduates he picked for Brandeis were invariably outstanding law students, often Jewish, and inclined, as was Frankfurter, to see LDB as an awesome figure.

Brandeis loved intellectual exchange, loved to teach, and was quick to recognize the intellectual gifts of others. With a few exceptions, he made excellent use of his clerks who, on the whole, worked hard for him and admired him. This did not prevent them from writing one another about LDB's foibles. One in particular, David Riesman, did not click with LDB, and many years later talked and wrote about why.

Riesman's comments give us a window into Brandeis's mind and style as a justice, not only as reflected in his relations with his clerks but in all the primary tasks of his job. In Riesman's view, LDB was, from first to last, a shrewd, purposive judge, rapidly staking out a position on the issues of law and policy that came before him and single-mindedly, and skillfully, seeking to vindicate that position. He used each of his job tasks to do so, fashioning arguments for why the Court should take a case or decide it in a certain way, behaving strategically in the decision-making and opinion-writing process, and making ample use of the talented Harvard graduates Frankfurter sent him.

Examples abound. If LDB wanted to eliminate the long-established system of federal and state courts in the same state being able to declare different common law rules, he talked his fellow justices into believing that having different common law rules might be unconstitutional. Then, even though counsel in the case (*Erie Railroad* v. *Tompkins*, decided in 1938) had not even argued the constitutional issue, Brandeis wrote an opinion for the Court declaring that "there is no such thing as general federal common law," single-handedly changing the choice-of-law rules for the federal courts.

Brandeis's performance in *Erie* is just one illustration. He bargained with his fellow justices to get changes in the language of majority opinions, issuing pro-

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spective dissents that he was prepared to suppress if changes were made. He marshaled sociological and economic evidence in support of legislation he believed should survive challenges to it under the Constitution. His most famous free speech opinion, *Whitney* v. *California* (where he first articulated the theory that the First Amendment is designed to allow free people to govern themselves), came in a case where he agreed that the party being incarcerated for "seditious" speech, Anita Whitney, should remain in prison.

During Riesman's term, in a case testing whether the state of Oregon could constitutionally prevent out-of-state berry box manufacturers from selling their products within Oregon, Riesman found evidence that the legislation in question was the result of lobbying by in-state berry growers. LDB ignored the evidence because he believed that the states should be "laboratories of experimentation" for social programs. The states, yes; but not, on the whole, the federal government. Brandeis was only too happy to join majorities invalidating early New Deal legislation because he thought excessive governmental size was just as unsound as excessive size in corporations.

Brandeis was, in short, a result-oriented, agenda-driven judge of a very sophisticated kind. He mastered all of the primary tasks of his job. At the same time he kept a close eye on politics. "Holmes has no idea what makes men work," he wrote once of his dearest friend on the Court. "He is as innocent as a girl of 16." Holmes would "fire off" an opinion in a case, thereby preventing him from playing it long within the Court's decision-making process. Brandeis always played it long if he thought that necessary. Taft came to believe, early in his chief justiceship, that Holmes had become Brandeis's dupe.

"I love the old gentleman," Taft wrote a friend in frustration, but Holmes's presence gave "Brandeis two votes." Taft had already concluded that Brandeis was with "the Bolsheviki," so he was hardly being objective. But one strategic politician—Taft, who had had six appointments during his one-term presidency, and was invariably lobbying for his favorites to be nominated to lower federal courts and the Court itself—recognized another.

None of this is to say that Brandeis was a bad judge, or even to suggest that he was a judge who behaved inappropriately. He was a consummate master of the primary tasks of his job, just as he had been a consummately gifted law student, lawyer, municipal reformer, and presidential adviser.

It is to say, however, that one should read a little more deeply when one encounters LDB's masterful arguments for one legal position or another. The arguments are forcefully made and eloquently expressed, but behind them is Brandeis's complete views on everything. Riesman was able to glimpse that dimension of LDB because he expected Brandeis to be one thing—a southern agrarian, which Riesman, then in his twenties, thought he was as well—and found that LDB was much more than that. Riesman did not have a good time in his clerkship year, and never slipped into law clerk hagiography, which is all too common in recollections about Brandeis.

Melvin Urofsky, for different reasons, comes close to slipping into hero-worship in *Louis D. Brandeis*. Urofsky is too solid and balanced a scholar to cross the line into rapt admiration. But the Brandeis effect—*le juge formidable*—hovers around this book. As Ralph Waldo Emerson once allegedly said to Holmes when, at 20, Holmes showed Emerson an analytical essay he had written on Plato, "When you strike at a king, you must kill him." ♦

B&A

Googling Google

The story behind the story of the search engine.

BY JONATHAN V. LAST

Ken Auletta's *Googled* is the sixth corporate biography of Google published in the last four years. Auletta's book is more current than the others, and he had better access to the principals. The company's founders, Larry Page and Sergey Brin, and their partner Eric Schmidt spend much time talking on the record, as do many other Silicon Valley silverbacks. But Auletta's conclusions largely resemble those of the other entrants in the genre: Page and Brin are brilliant; the world has never seen a company like Google; Google is all-powerful and fated to rule the cosmos. It's not clear that any of this received wisdom is quite right.

Googled
The End of the World as We Know It
by Ken Auletta
Penguin, 400 pp., $27.95

Jonathan V. Last is a staff writer at THE WEEKLY STANDARD.

It is clear that Google's rise is remarkable, and an interesting story. As graduate students at Stanford, Page and Brin became interested in creating a search engine that could scale upwards along with the growth of the world wide web. This meant abandoning human editors—which is how the early web searches were compiled—and replacing them with automation. They devised a system in which automated spider programs would copy pages from the Internet, which would then be indexed. Results are determined by a ranking system based on a complex algorithm.

Page and Brin left Stanford in 1998 and incorporated their search engine into a company called Google. ("BackRub," "Googol," and "The Whatbox" were the other names under consideration; the last would have been the

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most descriptive.) From the start, people were excited about the business. They had $1 million in seed money from four investors at the outset and were given another $25 million in venture capital less than a year later. This despite the fact that neither Brin nor Page had any idea how they might eventually make money with their product.

After three years of losing money, Google came up with the idea to sell little text ads on its search-results page. The ads a user was shown depended on what they had searched for, making them particularly attractive to advertisers. Adding to the enticement was that Google only charged advertisers if a user clicked on their ad. It was a revolutionary idea which turned into gushers of money for Google. The year before they began serving up these ads the company had revenues of $86 million. The next year (2002) revenues jumped to $400 million. The year after that they stood at $1.5 billion, and they've continued to increase at a phenomenal pace ever since.

Google's wealth is difficult to comprehend. On the day that the company went public 900 employees became millionaires. Four employees and three outside directors became billionaires. Even the in-house masseuse became so wealthy that she retired and established a private philanthropic foundation. And in the intervening years, Google has used its wealth to spread outwards from the search business into a formidable number of other businesses: web video, TV advertising, e-commerce, cloud-computing, and mobile phones, to name just a few.

In *Googled* Auletta ascribes the company's success to Page and Brin's genius and the uniqueness of the corporate culture they've built. Google centers itself around rank-and-file engineers, not managers or sales staffs. Neither of the founders employs a secretary. The company is famously generous with employees, providing free massages and meals and giving them 20 percent of their work time to pursue individual projects of their choosing. And the founders have made plain that they view Google's mission as not to make money but to improve the world.

In the prospectus they released before their IPO, Page and Brin said eight times in a six-page stretch that they wanted to make "the world a better place." As in: "[L]arge, successful corporations . . . have an obligation to apply some of those resources to at least try to solve or ameliorate a number of the world's problems and ultimately to make the world a better place."

Larry Page, Sergey Brin, 2002

MICHAEL GRECCO / GETTY IMAGES

But the mythology of Google is somewhat different from reality. Outside of its core search/advertising business, Google has had few successes. Its home-grown products, such as Orkut, Knols, Lively, and Google Checkout (knockoffs of Facebook, Wikipedia, Second Life, and PayPal, respectively), have been failures. Google's biggest successes have come from acquisitions. For instance, Google bought YouTube after its own attempt at video on the web, Google Video, crashed and burned. And did the same with Blogger after its blog platform, Pyra Labs, failed. Even the "successful" acquisitions Google has made—Google Earth, Google Maps, Google Docs, and Blogger were all purchases, too—have taken up resources without creating significant revenue.

As for its search business, Page and Brin did build what is, for now, the world's best search engine—no mean feat. Yet search wasn't the company's big innovation; advertising was. According to legend, Google was the first company to realize that simple text ads based on search queries, which only charged the advertiser on a per-click basis, could be enormously, staggeringly profitable.

Only they weren't. Bill Gross, who founded Overture, came up with that idea and in 1999 approached Google about merging the companies. Page and Brin said no, that they would never mix paid ads with search results. Which is now the only profitable thing Google does. (Overture sued Google only to have the suit withdrawn because the company's corporate parent, Yahoo, owned some old warrants for Google stock, which it cashed in after the IPO, a form of pseudo-settlement.)

Google's only real business is advertising, yet even here they've had mixed results. Those text ads are dynamite, but Google couldn't master the banner ad business and eventually resorted to simply buying DoubleClick, the industry leader. Eager to extend their tentacles into other ad mediums, Google started selling print ads, TV ads, and radio ads. The print and audio divisions performed so badly that they've already been shut down. The TV division is still limping along lamely.

Google's one big success has been so big and successful that it papers over all of their other failures. Microsoft was like that once, too.

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Page and Brin really do seem to believe in Google's ability to change the world around them. Page once told a class of Stanford students that "if you solve search, that means you can answer any question. Which means you can do basically anything." It's a progressive mirage, but it's nothing new in business. Tycoons from Henry Ford to Jerry Yang have imagined that their businesses were actually civilizing missions for mankind. Google is a large, successful company, but despite Auletta's contention, there's very little new about it.

That said, *Googled* is not entirely uncritical. Surveying Google's vast empire of money-losing divisions, Irwin Gotlieb, CEO of the advertising giant GroupM, quips, "They can buy anything they want, or lose money on anything they choose to. I can only do things that are rational to do for my business." Auletta sketches a picture of Page and Brin's relationship with Al Gore that is particularly unflattering. Gore is close to the duo and a member of Google's board, but they view him not as a canny operator or political confederate/celebrity but as a public intellectual on the level of Stephen Hawking.

For all that, the only time Auletta pushes back against Page and Brin is when they apply their engineering insights to his own work. During the course of one interview, Brin tells Auletta that "people don't buy books" anymore and that he might as well put his book online for free.

"You might make more money if you put it online," Brin says. "More people will read it and get excited about it." Auletta then patiiently explains that, without an advance, he couldn't have reported the book. Without a publishing house, the book couldn't be edited and fact-checked and vetted by lawyers. And, incidentally, that Stephen King tried exactly such a system in 2000 by publishing *The Plant* over the Internet, releasing the novel in serial, for a one-dollar fee using the honor system. "Sales" (of the paying variety, that is) were so slow that King abandoned the project without finishing the story. ♦

B&A

The Greek Way

An ancient Mediterranean civilization is still in business. **BY DAVID WHARTON**

For those on nodding terms with ancient history, the life trajectory of the Greek *polis* (city-state) looks a lot like that of a rock star on the old VH1 series *Behind the Music*. The *polis* explodes inexplicably from dark-age obscurity, burns brilliantly for a time at Athens, then flames out in shameful and foolish excesses like the disastrous invasion of Sicily during the Peloponnesian War. A few generations later, the once incandescent city-state is just a backup singer in Alexander the Great's band, lucky to be working at all.

Histoires Grecques
Snapshots from Antiquity
by Maurice Sartre
Translated by Catherine Porter
Belknap Press of Harvard, 448 pp., $35

There's some truth to that narrative if political independence is considered the city-state's *sine qua non*. The Greeks themselves certainly thought it was important when they waved it like a bloody flag while fighting invading Persians and each other during the fifth and fourth centuries. Looked at this way, the *polis* was a short-lived and unsuccessful political experiment. But Greek-speaking peoples were living in cities and towns that they called *poleis* for a long time before the rise of classical Athens, and they kept living in them in much the same way for centuries afterwards all across Alexander's former empire.

It is this Greek way of living in cities and towns that is Maurice Sartre's theme.

"Snapshots from Antiquity" is an entirely apt subtitle. Sartre's method is to present for our contemplation some fragment of Greek life or literature, then to contextualize it and draw out its meaning, as though he were giving a running commentary on his Polaroids of a grand tour of the Greek-influenced Mediterranean world. He assumes that you've already taken the two-week *Glory That Was Greece* package tour, and so mostly skirts the well-known destinations. Sartre is the canny and seasoned guide who shows you the backstreet sights that, if they are less spectacular than the Acropolis, nevertheless fascinate with their grittier glimpses into the lives of the natives.

Many of the people and places he visits will be unfamiliar to those outside the small world of classical scholarship, and perhaps even to many of those in it. But that is all to the good. We don't really need another book about the Peloponnesian War right now.

Sartre proceeds more or less chronologically, but the subjects he chooses to explore at first seem random—for example, some Lydian coins, or a graffito on the leg of an Egyptian statue, or a fragmentary inscription from a jerkwater Macedonian town, regulating who can and can't use the local *gymnasium*. The suspicion arises that Sartre is just taking us on an idiosyncratic tour of minor antiquities.

By his own confession, he follows his own interests instead of developing a grand thesis. But an overarching aim becomes clear soon enough: He wants to give us a detailed picture of life as it was lived in the *polis* by its many and varied inhabitants. Each chapter fills in a few more brush strokes.

Sartre is particularly interested in the way that the *polis* at the periphery of the Greek world adapted itself to varying

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cultural pressures. So the Lydian coins provide an opportunity to explore the accidental invention of money by King Alyattes in Asia Minor and its adoption by various city-states around the Mediterranean. What accounts for the fact that some city-states, like Athens, took to the use of coined money quickly, whereas the Phoenicians adopted it slowly, and the Spartans rejected it outright? The answer is: no single thing, but money's varying reception allows for a close interrogation of the varying cultural, religious, and economic attitudes in the several city-states.

That, in the end, is Sartre's point. "History" for Sartre still holds its etymological meaning—"inquiry"—as it did for his ancient predecessor Herodotus.

Like Herodotus, Sartre frequently adopts a stance of moral neutrality, even when discussing such fraught topics as the brutal Spartan *krypteia*, a custom in which outstanding Spartan youth were selected to undergo an ordeal of living off the land in the wilderness while secretly killing as many Helot slaves as they could before being integrated into adult society. But he usefully compares the *krypteia* to male rites of passage on Crete and in Athens (which left out the slave-killing), noting that all of them conform to the familiar pattern of exclusion, inversion, and integration, common to such rituals around the world, including among the Indians of North America.

His parting comment, however, is strangely clueless: "The maintenance of such 'primitive' rites in developed societies such as those of the Greek city-states may seem surprising." Really? I suppose Sartre has never heard of initiation trials like those of the Order of the Arrow in the Boy Scouts, or the Ranger School ordeals in the U.S. Army.

Histoires Grecques extends the range of what most would consider "Greek history" geographically, chronologically, and culturally, with many essays on the interaction of Hellenized populations with Persians, Egyptians, Romans, Jews, and Christians. Thus he devotes a short chapter to an interpretation of the events in the second book of Maccabees in the Bible as an opening skirmish of a long internecine struggle within Judaism to adapt itself to the Hellenized world of the Near East. He takes up the theme again in a close study of local Jewish political intrigues in Egyptian Alexandria under the Roman emperors Caligula and Claudius.

Tyche of Antioch by Eutychides (3rd century B.C.)

Is this really "Greek" history? It is if you think that imperial Rome was an essentially Hellenized civilization, and that "Greek" refers not only to geographically and linguistically defined peoples, but to habits, customs, institutions, and modes of thought.

Sartre's series of vignettes concludes with the dramatic figure of Hypatia, the Neoplatonic philosopher of Alexandria who was clubbed to death, quartered, and burned during the episcopate of St. Cyril, some say at his instigation or with his approval. For obvious reasons, the Church has always strenuously denied this. Sartre interprets Hypatia's death as collateral damage in a struggle for temporal power between competing groups of Hellenized and cosmopolitan Christians rather than as the secular martyrdom of a pagan saint, as freethinkers have argued since the Enlightenment. Thus Sartre leaves off by tweaking fixed ideas on both sides of a controversy, a practice he relishes throughout the book.

Sartre's investigations intimate that Greek civilization never really quite dies; it just keeps metamorphosing itself in changing circumstances, and Greek institutions and cultural configurations still crop up in unexpected places.

On a recent afternoon at West Point, watching the cadets come out of their academic buildings for physical training, I found it impossible not to see traced there the faint outlines of the ancient *gymnasium*, where young men were trained in mind and body to be future leaders. Or in towns across America, ordinary citizens serve on elected and appointed boards and commissions, dutifully and voluntarily looking after their town's welfare, much as their civic-minded counterparts did in city-states across the Hellenized world millennia earlier.

Of course the lines of causation for these similarities are impossible to trace, but throughout our local governments, institutions, schools, entertainments, and architecture, innumerable threads of the ancient life of the *polis* are still woven into the fabric of our quotidian experience. ♦

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B&A

Red Warbler

Marching in step with a song and a smile.

BY P.J. O'ROURKE

We are the folk song army,
Every one of us cares.
We all hate poverty, war, and injustice,
Unlike the rest of you squares.

So join in the folk song army,
Guitars are the weapons we bring
To the fight against poverty, war, and injustice,
Ready, aim, sing!

—Tom Lehrer

This is an important book. As with any book about which this needs to be said, what's meant is that it isn't important at all. It's a hagiography of Pete Seeger—and not even a proper, thorough one with sheet music, lyrics, and recording history. But there are important aspects to the book, none of them intentional.

The Protest Singer
An Intimate Portrait of Pete Seeger
by Alec Wilkinson
Knopf, 152 pp., $22.95

Pete Seeger is a modest, unassuming, cheerful, and kind-natured man. He's a good folk singer, if you can stand folk singing. And he's such an excellent banjo player that you almost don't wish you had a pair of wire cutters. His abilities as a composer range from the fairly sublime ("Turn, Turn, Turn") to the fairly awful ("If I Had a Hammer") by way of the fairly ridiculous ("Where Have All the Flowers Gone?").

He built his own house—rather badly, as far as I can tell. And he lives in it—rather well, with a loving wife and frequent visits from doting friends and relatives. He's spent his life being in favor of the right things, such as decent wages, racial equality, peace, and a clean Hudson River, and being opposed to the wrong things such as hunger, bigotry, violence, and a dirty Hudson River. He was also a member of the Communist party long past that organization's youthful-idealism sell-by date. Seeger is candid on the subject, his initial adverb notwithstanding:

> Innocently I became a member of the Communist Party, and when they said fight for peace, I did, and when they said fight Hitler, I did. I got out in '49, though. . . . I should have left much earlier. It was stupid of me not to. My father had got out in '38, when he read the testimony of the trials in Moscow, and he could tell they were forced confessions. We never talked about it, though, and I didn't examine closely enough what was going on. . . . I thought Stalin was the brave secretary Stalin, and had no idea how cruel a leader he was.

Thus is raised a momentous question, maybe the most momentous question of the modern era: How is it that legions of modest, unassuming, cheerful, and kind-natured people pledge their troth to political systems that burn continents and bury innocents by the hundred million?

No doubt the companionship of Pete Seeger is to be preferred to the company of country club Republicans like myself—proud, grasping, crabby, and with hearts as hard as three-wood clubheads. But at least our idea of world domination is to conquer the dogleg on the seventh hole (from the ladies' tee, if no one is looking). Yet when it comes to hagiographies we have to hire some out-of-work English Ph.D. to ghost-write our own: *How I Made a Fortune in Downloadable Estate Planning Software—My Triumph of the Will.*

Anyway, nice, sweet, and well-meaning busybodies have been wreaking havoc with the globe since at least the days of Rousseau. *The Protest Singer* offers a pretty good explanation of how the hopeful and the helpful manage to wander into a position of support for a Committee of Public Safety, a Nazi party, a Soviet Union, a Sarajevo, an al Qaeda, and a typical American university education. You don't even have to read the book to gain this understanding; simply scan page three and the dust jacket.

The secret of the too-good's complicity in the too-bad seems to lie in a certain feckless disassociation from the real world. This is Alec Wilkinson's sketch of Pete Seeger's early history:

> He went to Harvard, joined the tenor banjo society, and studied sociology in the hope of becoming a journalist, but at the end of his second year he left before taking his exams and rode a bicycle west, across New York State.

And this is the publisher's thumbnail biography of Alec Wilkinson:

> Alec Wilkinson began writing for *The New Yorker* in 1980. Before that, he was a policeman in Wellfleet, Massachusetts, and before that a rock-and-roll musician. . . . His honors include a Guggenheim Fellowship, a Lyndhurst Prize, and a Robert F. Kennedy Book Award.

Wellfleet, by the way, is a resort town on Cape Cod where the principal crime problems are nude sunbathing and dune buggies crushing plover nests.

Fold two portions of scrambled egghead personal journey into one quote from Seeger's journal.

> I seem to stagger about this agonized world as a clown, dressed in happiness, hoping to reach the hearts and minds of the young.

Mix vigorously with a statement by Wilkinson.

> . . . all human beings are created equal and have equal rights. In the early and middle parts of the twentieth century, such a conviction made a person not a patriot, but a socialist.

P.J. O'Rourke, a contributing editor to THE WEEKLY STANDARD, *is the author, most recently, of* Driving Like Crazy.

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And you get a taste of the sharing, caring, lame-o lefty mind omelet that spreads mood-poisoning to the masses.

The other momentous question of the modern era is what to do about it. *The Protest Singer* tells us what *not* to do. The slim volume is padded with a 28-page transcript of Seeger's August 18, 1955, testimony before the House Un-American Activities Committee. (This committee is sorely in need of reconstitution, considering how many new activities have emerged that are un-American. The other day I saw a fellow turn off his BlackBerry before sitting down to a restaurant meal—and I had no one to report him to.)

Seeger was questioned by HUAC's chairman, Democratic congressman Francis E. Walter of Pennsylvania, a New Deal hack and coauthor of the McCarran-Walter "Yellow Peril" Act that tried to limit non-European immigration. Assisting the inquiry was the committee counsel, Frank S. Tavenner Jr., who seems to have been an idiot. The result of Seeger's being grilled was a sort of reverse waterboarding that, had it gone on much longer, would have had committee members and staff confessing to attempted suicide attacks on Joseph McCarthy.

Here are a few tidbits.

MR. TAVENNER: *What is your profession or occupation?*

MR. SEEGER: *Well, I have worked at many things . . . and I make my living as a banjo picker—sort of damning, in some people's opinion. . . . It is hard to call it a profession. I kind of drifted into it and I never intended to be a musician, and I am glad I am one now, and it is a very honorable profession, but when I started out actually I wanted to be a newspaperman, and when I left school—*

CHAIRMAN WALTER: *Will you answer the question, please?*

MR. SEEGER: *I have to explain that it really wasn't my profession. . . .*

CHAIRMAN WALTER: *Did you practice your profession?*

MR. SEEGER: *I sang for people, yes . . . and I expect I always will.*

MR. TAVENNER: *I have before me a photostatic copy of the June 20, 1947, issue of the* Daily Worker *[containing] this advertisement: "Tonight—Bronx, hear Peter Seeger and his guitar, at Allerton Section housewarming." I ask you whether or not the Allerton Section was a section of the Communist Party? . . .*

MR. SEEGER: *I am not going to answer any questions as to my association, my philosophical or religious beliefs or my political beliefs . . . or any of these private affairs. I think these are very improper questions for any American to be asked. . . .*

MR. TAVENNER: *I have before me a photostatic copy of . . . the June 1, 1949, issue of the* Daily Worker *[containing] this statement: The first performance of a new song, "If I Had a Hammer," . . . will be given at a testimonial dinner . . . at St. Nicholas Arena. . . .*

MR. SEEGER: *I shall be glad to answer about the song, sir, and I am not interested in carrying on the line of questioning about where I have sung any songs. . . .*

CHAIRMAN WALTER: . . . *I direct you to answer . . .*

Pete Seeger, 1955

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MR. SEEGER: *I am sorry you are not interested in the song. . . . I am saying that my answer is the same as before. I have told you that I sang for everybody.*

CHAIRMAN WALTER: *Wait a minute. You sang for everybody. Then are we to believe, or to take it, that you sang at the places Mr. Tavenner mentioned? . . .*

MR. SEEGER: . . . *I will tell you about my songs, and I am not interested in who listened to them.*

We all know the types who listen to Pete Seeger songs; even Pete admits they aren't interesting. Nonetheless, Seeger has labored long and hard among these featherheads. As Wilkinson says, "He hoped that by making people feel themselves to be elements of a collective identity, he could intensify their experience—enlarge and encourage them and help hold oblivion at arm's length."

Oblivion being what Robespierre, Mao, Pol Pot, *et al.* pressed to their bosoms. Pete Seeger fans do, indeed, keep such gruesome results of their ideological turpitude at arm's length, as Pete himself did. And we sensible conservatives should be thankful to Seeger for all he's done to help make himself and the rest of these nitwits less effective at generating oblivion.

It's hard to build a gulag when you're busy organizing a hootenanny. ♦

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B&A

Speech and Song

The music of language in the words of the poet.

BY DAVID YEZZI

'So when he surfaces, lumplike, bashful. . . .'

"Poetry," Robert Graves once wrote, "is more than words musically arranged. It is sense; good sense; penetrating often heart-rending sense." Based on his ninth collection of poems, *The Lover's Guide to Trapping*, Wyatt Prunty would agree. His poems are heart-rendingly sensible in an age that mistakes fashionable nonsense for innovation, and mere wordplay for linguistic spark.

The Lover's Guide to Trapping
by Wyatt Prunty
Johns Hopkins, 72 pp., $23.95

Prunty has, in his own critical writing, identified two types of contemporary poetry that stand as opposites: "plainspoken poems that are reticent about intensity and lyrical poems that are both compulsive and musical," in other words, speech and song. Speech lends itself to a realist's description of the fallen world, while song embarks on more visionary flights describing an ideal one.

In the best poems, these two elements work in tandem, essaying the visionary while maintaining firm contact with the rational. Favoring vision leads to airy blather, favoring reason leads to journalism.

On first glance, Prunty's measured address and homey subjects seem to favor speech. Certainly, there is nothing "visionary" about the subject of the first poem here, a mole tunneling blindly through soft earth:

Myopic master of the possible,
Wise one who understands prudential ground,
Revisionist of all things green;

So when he surfaces, lumplike, bashful,
quizzical as the flashbulb blind who wait
For color to return, he'll nose our green-
rich air with the imperative poise of now.

The unlovely mole is the poet's check against sentimental effusion, a tiny realist who knows there can be no eternal spring. But the mole, like the poet, is sly: His realism, the imperative of his "now," makes the green just a bit greener.

On second glance, however, the poem may be closer to song than speech. Rather than proceeding rationally from one objective observation to the next, the poem leaps from figure to figure with the opulent abandon of symbolist: "myopic master of the possible," "wise one," "quizzical as the flashbulb blind," "our green-rich air." This is sly, stealthy poetry in which Prunty's mild-mannered, buttoned-down persona continually reveals the flashing eyes and floating hair of the poet.

Rain and the broadest reaches go under;
Drought, and they are dust. But as always these remain.
To die down to stubble, to disappear,
Then rise from dark into the leaf-long change
Of new life—this carries more than reason
Gathers in its mirrors, as being fertile
After freezing cold or swallowing flood
Bears more than powers now to plant.

The poem carries more reason than can gather into denotative speech, incorporating the connotations of song in the music of the poem. (Full disclosure: Some of these poems have appeared in the *New Criterion*. All I can say is, I liked them then, and I like them now.)

And the other man nodded and laughed,
then prodded the coals. He had a stick for that,
and worked it through the fire, back and forth,
back and forth, pausing every time it caught.
The stick would light; he'd lift and watch,
then let it go black out, working its tip
back down into the fire. He did this as
he talked about a truck at night
hit by a mortar shell so that it wrecked,
steering column pinning the driver's chest,
driver talking fast, truck catching fire.

When the fire drives the rescuers from the truck, we hear the young man's screams. With calm introspection the man describes how *a gun goes off, / the young man's sergeant walking back.* ♦

David Yezzi, executive editor of The New Criterion, *is the author, most recently, of* Azores: Poems.

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Polanski's Law

Does an artist's history mitigate his conduct?

BY JOHN PODHORETZ

So Roman Polanski has landed himself in a Swiss jail. Expecting garlands from cineastes at the Zurich Film Festival, the celebrated director—whose working career spans nearly 50 years, from the Academy Award-nominated *Knife in the Water* (1962) to the Academy Award-winning *The Pianist* (2002) and a forthcoming picture called *The Ghost* to be released in 2010—was greeted instead with shackles. It is likely that Polanski will, at the time of his new film's release, be in a jail cell either in Switzerland or in the United States, from which he has been a fugitive from justice for 32 years following his guilty plea for a sex crime involving a 13-year-old girl.

Polanski's status as a fugitive, an offense for which there is by definition no statute of limitations, has nothing to do with the merits of the situation in which he found himself. (Supposedly he had learned that the judge in his case was going to reject the terms of the plea-bargain agreement he had reached and hit him with a far more punitive sentence—including deportation from the United States, which, oddly, he achieved anyway by fleeing.) It is, strictly and solely, because he escaped the United States after formally confessing his guilt in having engaged in unlawful sexual intercourse with a minor.

There can be no greater violation of a nation's civil order than a convenient escape from justice. If there ever were a crime that cannot be tolerated, it is flight, in part because it offends the conscience, but even more because of its potentially epidemic effect on the rest of the criminal population. Let one man succeed at escape and he will be followed by the efforts of thousands to follow in his footsteps.

Plea bargains of the kind to which Polanski agreed are not binding contracts, and judges are not required to obey their terms, even though such bargains contribute to the good working order of the judicial system. Claims by Polanski's proponents and supporters that he was the victim of a miscarriage of justice owing to what they say was an improper communication between the judge and the Los Angeles district attorney's office are overlooking the plain truth of the matter.

Similarly, the fact that the girl he raped has since said she forgives him, thinks it's all water under the bridge, and wants to move on—after being paid a large settlement by Polanski—is actually immaterial. It's very simple. Polanski said he did it, and he ran away when it was time for him to face the music.

There is a suggestion in the words of those who are offering Polanski their support that he is receiving unequally harsh treatment because of his celebrity status. Of course, it was his celebrity in the first place back in the 1970s—as the director of *Rosemary's Baby* and *Chinatown*, two of the best films of the 1960s and '70s respectively—that led to his ability to negotiate a plea deal far sweeter than another 44-year-old man who had supplied a Quaalude to a 13-year-old, and then engaged in anal intercourse with her, would have been likely to get.

But it was not his celebrity alone. It was his unique position as a surviving widower of one of the transformative crimes of the 20th century—the pointless, unprovoked, and random slaughter of his pregnant wife Sharon Tate and two others by the psychotic hippie Charles Manson and his deranged band of followers. It is difficult, today, to recapture the horror invoked by those monstrous killings, which helped bring to an end the image of Southern California as a peaceful surfer's paradise and ended for all time the common American practice of leaving one's front door unlocked.

Nor had that been the only transformative crime Polanski had been compelled to survive; he spent the years of World War II as a hidden child. Both his parents were sent to concentration camps; his mother died in Auschwitz. There is, in the eyes of the older defenders of Polanski, a sense that his existential punishments in life have been so profound and horrific that he has already paid in blood for whatever crimes he may have committed. And that sense had surely played some compensating role in the terms of his plea bargain, which would have limited his time in jail to 42 days served in Chino State Prison.

Polanski the remorseless sex criminal has never effaced Polanski the tragic victim. Far from it. One of the most remarkable moments in recent American cultural history was the announcement, at the Academy Awards in 2003, that Polanski had won the Oscar as best director for *The Pianist*. By revisiting the horrors of his youth in a punishing film set in wartime Poland, Polanski had somehow managed to scrub himself clean and find himself the recipient, *in absentia*, not only of a statuette but a standing ovation.

The thing was, it was not just that he had won in spite of his criminal record; rather, it seemed apparent that he had won in some measure *because* of his criminal record, because he had persevered in spite of his exile from the United States. Polanski's triumph with *The Pianist* was a comeback story only the present-day Hollywood community could love, just as his standing at present makes him a purported victim of injustice to whom only the corrupt and malign doyens of the Hollywood community could possibly extend their support. ♦

John Podhoretz, editor of Commentary, *is* THE WEEKLY STANDARD*'s movie critic.*

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"The language that we use here is very important, because [rape] is not the allegation. . . . I know it wasn't 'rape-rape.'. . . All I'm trying to get you to understand is, when we're talking about what someone did, and what they were charged with, we have to say what it actually was, not what we think it was."

—Whoopi Goldberg discussing the Roman Polanski case on *The View* (NBC), September 29, 2009

GOLDBERG ON JURISPRUDENCE

especially in those instances where evidentiary ambiguity may lead to what might be called prosecutorial overreach.

For instance, it may reasonably be asked whether, in *California vs. Spector* (2003), producer Phil Spector did, in fact, commit "murder-murder" when he fired his revolver inside the mouth of actress Lana Clarkson. We cannot know with full confidence, at this date, either Spector's state of mind or Clarkson's conduct. Similarly, in *City of San Francisco vs. Arbuckle* (1921), the comedian Fatty Arbuckle was presumed guilty of "rape-rape," which led to the death of the alleged victim, Virginia Rappe; but as in *Polanski* (p. 131), there is no persuasive forensic evidence that "rape-rape" occurred, or that homicide was intended.

A reasonable judicial system might also speculate whether actor Wesley Snipes, in *United States vs. Snipes* (2008), was incontrovertibly guilty of the three counts of "tax evasion-tax evasion" for which he was convicted, or was just disorganized in his personal bookkeeping—a frequent occurrence among action stars *(United States vs. Van Damme, City of Encino vs. Seagal)*. Similarly, while actress Winona Ryder, in *People of the State of California vs. Ryder* (2001), was accused by the Beverly Hills prosecutor of "shoplifting-shoplifting," it may reasonably be inferred that she was, on the basis of the evidence and sworn testimony, merely accumulating goods for subsequent purchase, which in many California jurisdictions is called "shopping-shopping" and does not constitute violation of the law. As earlier noted, when the juvenile daughter of actress Lana Turner was prosecuted for the murder of her mother's lover, mobster Johnny Stompanato, in *Los Angeles County vs. Crane* (1958), it was alleged that her "stabbing-stabbing" of the alleged victim constituted assault with intent to murder when, as the defendant's counsel eloquently indicated, there was no such intent.

As always, it is important, in any system of jurisprudence which distinguishes between what defendants are *accused* of doing, and what

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